

# **TENNESSEE DEPARTMENT OF HUMAN RESOURCES ATTENDANCE AND LEAVE POLICIES AND PROCEDURES**

## **INTRODUCTION**

**PURPOSE.** To provide uniform policies, guidelines and procedures for attendance and leave management to Executive Branch departments and agencies of Tennessee state government.

Authority: T.C.A. 8-30-215  
Personnel Rule: 1120-6-.01

**RESPONSIBILITY.** It is the joint responsibility of each employee's immediate supervisor, departmental personnel officer and appointing authority or designated representative to determine the type of leave to be charged for each absence and to promptly and properly record and report this leave. Leave with pay represents the expenditure of State money. Therefore, the appropriate use and proper and prompt reporting of leave are essential to sound fiscal and personnel management. Funds used incorrectly for leave may be recovered from the employee or, if this is not possible, from those departmental officials responsible for approving the improper action. It is also the responsibility of the employee, supervisor, departmental Human Resources officer and appointing authority or designated representative to maintain an accurate and up-to-date record of the amount of scheduled overtime work performed, the necessity for the overtime work and the schedule of compensatory time taken.

Authority: T.C.A. 8-30-215  
Personnel Rule: 1120-6-.02

# TENNESSEE DEPARTMENT OF HUMAN RESOURCES ATTENDANCE AND LEAVE POLICIES AND PROCEDURES MANUAL

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## GLOSSARY

1. **Accrue** - To earn annual or sick leave for each month of service or major fraction thereof.
2. **Active Pay Status** - Term applied to an employee who is actually working or who is using paid leave (other than paid terminal leave or sick leave bank leave).
3. **Administrative Leave** - Leave with pay when an employee is removed from normal duties at the convenience and discretion of the appointing authority.
4. **Adoptive Leave** - Special leave without pay or sick leave for a period of thirty (30) working days granted to adoptive parents.
5. **Agency** - Any board, commission or department which employs and exercises authority over any employee of state government.
6. **Annual Leave** - Paid time away from work considered to be personal time. The amount accrued is based on the employee's length of state service.
7. **Appointing Authority** - An officer having power to make appointments to and separations from positions in state government.
8. **Appointment** - The official designation of a person to fill a position in state government as an employee.
9. **Assault Pay** - Full pay for a total of ninety (90) calendar days granted to an employee injured in the line of duty as a result of an assault which results in the employee's inability to perform job duties. This pay is a combination of regular payroll and Division of Claims Administration compensation.
10. **Audit** - To examine and verify amounts of leave and/or requests for payment.
11. **Bereavement Leave** - Three (3) days of paid leave, not taken from sick or annual leave, granted in the event of death of an employee's spouse, children, stepchildren, parents, grandparents, grandchildren, siblings, stepparents, foster parents or parents-in-law.
12. **Board of Claims Leave** - See Division of Claims Administration Leave.
13. **Brother-in-law** - (1) Brother of one's spouse. (2) husband of one's sister.
14. **C-7 Form (Attendance and Leave Adjustment)** - Form used to make leave balance corrections.
15. **Career Service** - All positions and persons in the State Service which have been placed under career service provisions of Title 8, Chapter 30, of Tennessee Code Annotated. (Previously called Civil Service).

16. **Civil Leave** - Leave allowing an employee to be absent from work on the day or days required while serving as a juror in any court of the United States or the State of Tennessee, provided the jury duty exceeds three (3) hours during the day for which the excuse is sought.
17. **Commission** - The Tennessee Civil Service Commission.
18. **Commissioner** - The Commissioner of the Department of Human Resources.
19. **Compensatory Leave** - Time off with pay earned by an exempt or non-exempt employee when compensable overtime hours are worked and not compensated in cash.
20. **Compressed Work Schedule** - A 37.5 or 40.0 hour scheduled workweek worked in four or fewer days.
21. **Credit** - A deduction from an existing balance, such as subtracting leave on a C-7 form.
22. **Creditable Service** - Any month which was part of a 1600 hour or greater yearly schedule in which an employee exceeds 50% of his regularly scheduled monthly working hours by one-tenth (0.1) of one hour shall be creditable for maximum accumulation purposes. When extended leave without pay has been taken to the extent that an employee did not work for a month or a major fraction thereof, that month shall not be included in computing state service.
23. **Division of Claims Administration Leave** - Leave without pay granted to an employee who has incurred an injury in the line of duty and is drawing compensation through the Division of Claims Administration. (Formerly called Board of Claims Leave).
24. **Educational Leave** - Leave with pay, normally at a reduced amount, granted and supported by a state department or agency under the Specialized Out-Service Training Policy administered by the Department of Human Resources Educational leave pay may also be requested by an employee to continue his education on a full-time basis.
25. **Emergency Appointment** - The appointment of a person to a career service position for a period not to exceed one hundred twenty (120) days when an emergency makes it impractical or impossible to fill the position through standard appointment procedures.
26. **Executive Level Employee** - An exempt employee ineligible to receive compensation for overtime hours worked. The Commissioner designates an employee in this category by job classification.
27. **Executive Service** - All positions and persons in the state service not subject to the career service provisions of Title 8, Chapter 30, of Tennessee Code Annotated.
28. **Exempt Employee** - Employee exempt from the overtime pay requirements of the Fair Labor Standards Act (FLSA).
29. **Extended Leave** - Leave without pay for the major portion of a month. Instances for which extended leave may be approved include special leave without pay, maternity,



adoption, educational, personal educational, Division of Claims Administration, military and sick leave bank leave.

30. **Flex-Time** - A work schedule which deviates from the normal 8:00 a.m. to 4:30 p.m. workday but is still within general guidelines authorized in advance by an appointing authority.
31. **Family and Medical Leave Act (FMLA)** - Federal government regulations setting requirements for granting leave for family and medical reasons, for providing insurance coverage during the leave period and for reinstating employees to the same or an equivalent position when the leave period has ended.
32. **Foster Parent** - Person who has performed the duties of a parent to the child of another person by rearing the child as his own child.
33. **Fair Labor Standards Act (FLSA)** - Federal government regulations setting minimum wage and overtime pay requirements.
34. **Full-time** - A position or employee budgeted for or scheduled to work a full-time schedule of one thousand nine hundred and fifty (1,950) hours or more per year.
35. **Gross Misconduct** - Any job-related conduct which may subject an employee to criminal prosecution.
36. **Initial Probation** - The first working test period (at least six months) an employee serves with his agency before becoming a career employee in that agency.
37. **Interim Appointment** - The appointment of a person to a career service position for a period not to exceed one year.
38. **Irregular Work Schedule** - Any work schedule totaling 37.5 or 40.0 hours per week other than the regular Monday through Friday schedule.
39. **Job Sharing** - The sharing of a single full-time position in the executive service by part-time employees who have the same job title and are limited to a combined total of 37.5 hours per week.
40. **Limited Term Appointment** - The appointment of a person to an executive service position for a limited term pursuant to statute.
41. **Longevity Pay** - Lump sum payment intended to reward employees for service to the state and encourage those employees to remain employed by the state.
42. **Major Fraction of a Month** - Term used when an employee exceeds 50% of his regularly scheduled monthly working hours by one-tenth (0.1) of one hour.
43. **Maternity Leave** - Absence from work granted because of disability associated with childbirth.

- 44. **Military Leave With Pay** - Leave of absence with pay, not to exceed fifteen (15) working days in any one calendar year, for any reserve component of the armed forces of the United States to engage in performance of duties or training in the service of the State of Tennessee or the United States.
- 45. **Non-Duty** - Time spent on paid or unpaid leave during a workday.
- 46. **Non-Exempt Employee** - Employee subject to the overtime pay requirements of the Fair Labor Standards Act (FLSA). A non-exempt employee is eligible for cash compensation for time actually worked over 37.5 hours per week.
- 47. **Overtime** - Authorized time worked in excess of the employee's normal workweek schedule for which extra compensation is authorized.
- 48. **Part-Time** - A position or employee budgeted or scheduled to work a part-time schedule, usually less than sixteen hundred (1600) hours per year.
- 49. **PNF-213 (Attendance and Leave Report)** - A form to report all work and non-duty time for most employees.
- 50. **Premium Overtime** - Work time compensated at one and one-half times an employee's regular rate of pay for hours worked in excess of 40 in a workweek. Non-duty hours for which an employee is compensated, such as annual leave, compensatory leave, sick leave and holidays, are not counted as time worked.
- 51. **Reclassification** - Change of a position or employee from one job classification to another classification based on a change in duties, authority, and responsibilities.
- 52. **Regular Appointment** - Appointment of a person to a permanent position in either the career or executive service for an indeterminate period of time.
- 53. **Regular Employee** - Employee appointed to a permanent position scheduled to work sixteen hundred (1600) hours or more per year who has satisfactorily completed an initial probationary period.
- 54. **Regular Overtime** - Work time compensated at an employee's regular rate of pay for hours actually worked in excess of his regular 37.5 hour weekly schedule up to 40.0 hours in a workweek.
- 55. **Rescheduling of Work Week** - Assigning different working hours within the workweek so an employee works his standard number of hours during the period when the work is needed. The rescheduling of working hours for a specific day in a work week should be approved in advance by the employee's supervisor before the work is performed.
- 56. **Seasonal Appointment** - Appointment of a person to an executive service position for an indeterminate period of time to be scheduled to work for a certain period usually recurring each year and generally not exceeding sixteen hundred (1600) hours per year.
- 57. **Service Anniversary Date** - Projected date in the future (based on an employee's total creditable state service) when the employee will change service group codes and begin

accruing annual leave at a higher rate. Any break in service may cause a change in this date.

- 58. **Sibling** - One of two or more persons having one or especially both parents in common; brother or sister.
- 59. **Sister-in-law** - (1) Sister of one's spouse. (2) Wife of one's brother.
- 60. **Service Group Code** - A number (1, 3, 4, or 5) identifying an employee's rate for annual leave accrual and maximum allowable annual leave accumulation based on the employee's total years of active service in a leave accruing status.
- 61. **Sick Leave** - Leave accrued by an employee at the rate of one day for each month or major fraction of a month of active service which may be used for illness of the employee or illness or death of an employee's family member.
- 62. **Special Leave** - Leave without pay of a specific duration which must be requested in writing and recommended in advance by the appointing authority for approval by the Commissioner.
- 63. **State Service** - Designation that includes all officers, positions, and employees of the executive branch of state government and all boards, commissions and agencies in state government except those specifically excluded by T.C.A. 8-30-101(a)(23).
- 64. **Temporary Appointment** - Appointment of a person to an executive service position for a temporary period, usually less than six (6) months.
- 65. **Temporary Provisional Appointment** - Appointment of a person to a career service position for a period not to exceed four (4) months when there is an insufficient certificate of eligibles or no established register.
- 66. **Terminal Leave** - The annual leave balance of a separating employee. Any annual leave balance remaining after the employee's last working day is considered terminal leave.
- 67. **Workday** - A scheduled day of work exclusive of annual or sick leave, holiday time or other authorized leave periods.
- 68. **Workweek** - The standard work period beginning at 11:00 p.m. Saturday and running 168 continuous hours to 11:00 p.m. the following Saturday.

## **CHAPTER 1 WORK SCHEDULES**

### **OFFICE HOURS**

The central offices of all departments and agencies, as well as field offices not requiring irregular work hours or schedules, shall be open for the transaction of public business from 8:00 a.m. to 4:30 p.m. local time, each day except Saturdays, Sundays and legal holidays. The established office hours of other organizational units may vary from one unit to the next depending upon the nature of the work and the demand for the unit's service.

Hourly equivalents for days used in this manual are for employees on a 7.5 hour work day, 37.5 hours per week schedule. Certain employees have an 8.0 hour work day, 40.0 hours per week schedule. The same rules shall apply to all full-time schedules.

### **REGULAR WORK SCHEDULES**

The regular work schedule for most employees is 8:00 a.m. to 4:30 p.m., Monday through Friday. Local conditions may cause these hours to vary, but an employee scheduled to work 7.5 hours per day, Monday through Friday, is considered to be on a regular work schedule.

### **IRREGULAR WORK SCHEDULES**

Many departments and agencies require irregular work schedules of their employees because of the nature of the work. Management at each work location has the authority to schedule arrival and departure times and specific work days for employees depending upon local needs and subject to prior approval of the department or agency's appointing authority. The use of flex time and compressed work weeks is also subject to approval of the appointing authority. Any work schedule totaling more than 37.5 hours per week must have prior approval of the Commissioners of Human Resources and Finance and Administration.

An employee on an irregular work schedule must revert to a normal work week schedule when using a prolonged period of annual, sick and compensatory leave, when placed on extended leave without pay status, and when paid through the sick leave bank.

#### **Daylight Savings Time And Shift**

Under the Uniform Time Act, daylight savings time is observed from the first Sunday in April until the last Sunday in October.

- A. Employees on duty at 2:00 a.m. when daylight savings time goes into effect in April and moves forward by one hour, although they actually work one (1) hour less than a full shift, should be given credit for a full shift.

- B. When time reverts back in October to standard time, employees on duty during that shift will work and be compensated for an extra hour. This hour should be considered when determining eligibility for overtime compensation for that week.

## **WORKWEEK**

The standard workweek for accounting purposes begins at 11:00 p.m. Saturday and runs 168 continuous hours in the form of seven (7) consecutive twenty-four periods to 11:00 p.m. the following Saturday.

Authority: T.C.A. 4-4-105

Personnel Rules: 1120-6-.03; 1120-6-.04

## CHAPTER 2 LUNCH PERIOD AND LEAVE

### LUNCH HOUR

All employees (except those listed below) shall be allowed a one (1) hour meal period. The authorized meal period must be taken during the work shift and may not be used to alter arrival or departure time by not using the meal period.

- \* Uniformed members of the Department of Safety
- \* Wildlife Officers
- \* Park Rangers
- \* All employees assigned to hospitals or institutions in the Departments of Mental Health and Mental Retardation, Correction and Youth Development.

Examples of charging leave before and after the lunch hour are:

**Example 1:** The employee arrives at work at 8:00 a.m. and works continuously until 1:00 p.m. The employee then requests annual leave for the remainder of the day. The employee actually worked 5.0 hours and charged 2.5 hours of annual leave.

**Example 2:** The employee arrives at work at 8:00 a.m. and works until 1:00 with the usual lunch hour and then requests annual leave for the remainder of that day. This employee will be charged 3.5 hours of annual leave, having actually worked 4.0 hours and taken a lunch hour.

### ON CALL

Certain employees are "on call" during their meal period. These employees are relieved of their duties during the meal period but must remain easily reachable to report back to work, if necessary. These employees receive extra compensation only if they are called back to work.

### FIXED POST ASSIGNMENT

Certain employees cannot be relieved of duties to have a meal period during their work shift. This situation usually results from "fixed post" assignments in which employees may not leave their work station. These employees are considered to be at work even if they are able to eat a meal during their work shift and must be compensated accordingly.

### REST BREAKS

Appointing authorities or agency heads, at their discretion, may allow their employees two rest breaks during each workday. One break may be allowed in the morning and the other in the afternoon for a period not to exceed fifteen (15) minutes each. These rest breaks are a privilege and not a right and should be taken at times that do not interfere

with service to the public. If an employee chooses not to take advantage of rest breaks, this time may not be accumulated and added to lunch periods or any type of leave.

A rest break may not be used to alter arrival or departure time or used in conjunction with the lunch hour.

Authority: T.C.A. 4-4-105; 8-30-215

Personnel Rules: 1120-6-.07; 1120-6-.08

## CHAPTER 3 ADMINISTRATIVE LEAVE (Excused and Unexcused Absences)

### EXCUSED ABSENCE AUTHORIZATION

An excused absence is leave with pay granted by the Tennessee Code Annotated (T.C.A.) and/or Department of Human Resources rules or policies without being charged against the employee's compensatory, annual, or sick leave. This leave should be charged as administrative leave with pay unless noted differently.

### PARTICIPATION IN STATE EXAMINATIONS AND INTERVIEWS

An employee may be granted an excused absence to participate in career service and other examinations administered by the State of Tennessee for State employment but will not be granted an excused absence to participate in federal or other civil service examinations. An employee may also be granted excused absences to be interviewed for other State positions at the request of a responsible official of the interviewing agency. Absences for these reasons should be coded as "administrative leave with pay" on the employee's attendance and leave record.

### ELECTIONS - TIME ALLOWANCE FOR VOTING

Any person entitled to vote in an election held in this state may be absent from any service or employment on the day of the election for a reasonable period of time, not to exceed three (3) hours, necessary to vote during the time polls are open in the county where he is a resident. A voter absent from work to vote in compliance with this section will not be subjected to any penalty or reduction in base pay for his absence. If the work schedule of an employee begins three (3) or more hours after the opening of the polls or ends three (3) or more hours before the closing of polls of the county where he is a resident, he may not take time off under this section. The employer may designate the period of permissible absenteeism. Absences for this reason should be coded as "administrative leave with pay" on the employee's attendance and leave record.

Application for such absence shall be made to the employer before twelve (12) noon of the day before the election.

**Example:** In most elections, the polls close at 7:00 p.m. Therefore, State employees whose normal shifts ends at 4:30 p.m. and who have requested to leave early to vote, as prescribed above, should be excused at 4:00 p.m. on that date to ensure that they have a reasonable period of time to vote.

Since polls are open until 8:00 p.m. in the Eastern Time Zone, this policy only affects employees in that time zone working a schedule other than 8:00 a.m. until 4:30 p.m. Therefore, only employees having less than three (3) hours available between the normal end of their shift and 8:00 p.m., Eastern Time Zone, should be notified of this policy. Otherwise, the policy only applies to employees in the Central Time Zone.

### BLOOD DONATION

Employees participating in a state-sponsored blood drive will be considered **on duty** during the time necessary to give blood, plus a reasonable length of time for recovery. Any time away from



the job beyond that period, due to complications, must be charged as sick, compensatory or annual leave.

Employees with rare or special blood types contacted by the American Red Cross and its counterparts in other areas of the State and asked to donate blood will be considered **on duty** during the time required.

Employees donating platelets through the Pheresis Program should be granted "administrative leave with pay" for the time required, workload permitting. The difference in policy for pheresis donors is necessary due to the frequency one may give platelets versus whole blood (every two weeks versus every 56 days).

## **EMPLOYEE ASSISTANCE PROGRAM (EAP)**

Employees are to be excused to receive counseling through the EAP program for up to six (6) sessions per episode/problem. While supervisors may maintain informal records of employees' counseling sessions, no formal documentation of these sessions should be maintained. EAP counseling sessions are considered confidential. For this reason, employees should be considered "**on duty**" during the time counseling sessions occur and this time coded as working time on the employee's attendance and leave record (up to 6 sessions).

Should the employee be referred by an EAP counselor to other professional services for additional counseling or treatment, any further time off should be coded as compensatory, annual or sick leave as appropriate.

## **ABSENCE DUE TO INCLEMENT WEATHER**

Inclement weather does not usually warrant the closing of State offices. Absence due to inclement weather requires that each employee make a personal judgment pertaining to his safety in traveling to and from work. Loss of work time for this reason is charged against the employee's compensatory or annual leave accumulation. If the employee has no compensatory or annual leave, then the time absent is charged as leave without pay. Employees who make the effort to report on time and who report within a reasonable period should not be required to use leave for that absence.

Occasionally, extraordinary emergency conditions caused by extreme inclement weather may warrant the closing of some state offices by the Governor or the Governor's designee. Any decision to close state offices due to extreme inclement weather should be countywide and made county to county. Communication of any closing decision will be made as quickly as practical by public broadcast media.

Certain employees who are employed by MH/MR facilities, correctional facilities, Department of Children's Services (group homes, schools, and institutions), Department of Transportation, Department of Safety, and others which require the employee to maintain the health and safety of others may be required to report to work during periods of ordinary and extreme inclement weather.

Employees who work and/or reside in a county where state offices are closed due to extreme weather will receive administrative leave with pay for regularly scheduled working hours during the period of closing. Employees who must work when offices in their home or work county are closed are eligible for regular compensatory time for hours actually worked during the period of closing up to their regular scheduled hours for the workday. Hours worked in excess of regularly scheduled hours are compensated as overtime hours at the end of the workweek based on each employee's FLSA status. Such time worked by an executive grade employee should be treated

the same as time worked on a holiday. Part-time employees are not eligible for administrative leave or compensatory time. Employees on previously approved leave during the affected period must continue to charge the appropriate leave and will not be eligible for administrative leave.

## **ABSENCE DUE TO UNINHABITABLE BUILDING**

Employees who are not able to work in a building that is considered uninhabitable due to power outages, flooding, physical damage or other valid reasons should be granted administrative leave with pay for all regularly scheduled hours during the affected period. Employees who are required by management to work during the periods that the building is considered uninhabitable may receive regular compensatory time for hours actually worked during the affected period up to their regularly scheduled hours for the workday. Hours worked in excess of regularly scheduled hours are compensated as overtime hours at the end of the workweek based on each employee's FLSA status. Only those employees who are directly affected by a building closing are eligible for administrative leave with pay or compensatory time. Employees who normally work in an affected building or area who were assigned to a different work location that was not considered uninhabitable during the affected period are not covered under this policy. Such time worked by an executive grade employee should be treated the same as time worked on a holiday. Part-time employees are not eligible for administrative leave or compensatory time. Employees on previously approved leave during the affected period must continue to charge the appropriate leave and will not be eligible for administrative leave.

The appointing authority(s) in the affected agency(s) is responsible for making the initial determination that a building is uninhabitable through consultation with the Facility Administrator in the Department of General Services assigned to the location. If a determination is made to deem the building uninhabitable, the Commissioner of the Department of Human Resources should be notified as soon as possible for approval. Authorized personnel in the agency may deem a building uninhabitable in emergency situations that are considered hazardous to the safety of the employees or when situations occur outside the regular Monday through Friday work schedule. When this occurs, the Department of Human Resources should be notified as soon as possible. A follow-up written notification to the Department of Human Resources is required in all uninhabitable situations. The uninhabitable building policy only applies in instances in which an entire county is not closed. All employees within the county in which the building is located that are not affected by the building closure will not be eligible for any administrative leave with pay or compensatory time.

Employees cease to receive administrative leave with pay or compensatory time once the building is considered habitable again or an alternative work site is provided. Administrative leave and compensatory time granted under this policy may not exceed 37.5 hours (7.5 hour employee) or 40.0 hours (8.0 hour employee) without additional authorization from the Department of Human Resources.

## **HEALTH SERVICES**

Administrative leave with pay may be granted for an employee to attend State sponsored health promotion-related programs and activities or to receive medical treatment through the State Employee Health Center.

The employee must go directly to the health clinic or specified location and return immediately to work if he works in a county that is a reasonable distance from where the health services are being conducted. A maximum of seven and one-half (7.5) hours of administrative leave with pay may be granted for an employee to receive a physical examination at the Employee Health Center.

## APPEARANCE AT CIVIL SERVICE HEARINGS

The Civil Service Commission serves as the final step of the Grievance Procedure for career service employees. When an employee appears at a Civil Service Commission hearing at the discretion of a proper authority, administrative leave with pay shall be granted.

## STATE GROUP INSURANCE APPEALS

Employees may appeal state group insurance plan decisions when they feel benefits were not provided in accordance with the plan document. In addition to a review of the written record, employees may make a personal presentation as part of their appeal.

If an employee chooses to appear in person and is successful in the appeal, it is appropriate to grant administrative leave with pay for the absence from work.

## SPECIALIZED DISASTER RELIEF SERVICES LEAVE

A State employee who is a certified disaster service volunteer of the American Red Cross may be granted administrative leave with pay, not to exceed fifteen (15) regularly scheduled work days in each calendar year, to participate in specialized disaster relief services for the American Red Cross. This leave shall not affect the employee's regular leave status.

The employee must submit a written request from the American Red Cross giving details concerning the specialized disaster relief services to his appointing authority for approval.

An employee who works an irregular schedule must be placed on a regular schedule (7.5 or 8.0 hours per day) for the time this leave is being used. Holidays and scheduled off duty days do not count toward the fifteen (15) work days allowed.

This leave should be coded as "09" on the attendance and leave record.

Day/Date	S20	M21	T22	W23	T24	F25	S26	TOTAL
Scheduled		7.5	7.5	7.5	7.5	7.5		37.5
Worked		7.5	7.5					15.0
Non-Duty				7.5	7.5	7.5		22.5
Code				09	09	09		

## BEREAVEMENT LEAVE

Bereavement leave will be granted for three (3) days in the event of the death of an employee's immediate family member (defined as spouse, children, stepchildren, siblings, parents, grandparents, grandchildren, stepparents, foster parents and parents-in-law) without charge to the employee's accumulated leave balance. The granting of bereavement leave does not increase the total number of days provided for in Chapter 5 Sick Leave. An employee must be in a leave accruing position to be eligible for bereavement leave. Separating employees may temporarily interrupt terminal leave status to use bereavement leave.

Example: An employee had a sick leave balance of 90.5 hours. He is granted 3 days (22.5 hours) of paid bereavement leave. The bereavement leave is not deducted from his sick leave, leaving a sick leave balance of 90.5 hours. He also used 2 days (15.0 hours) of sick leave and this is deducted, leaving a sick leave balance of 75.5 hours.

Bereavement leave will be coded as administrative leave with pay on the attendance and leave record. For additional information on bereavement leave please refer to Chapter 5 Sick Leave.

### **DISCRETIONARY LEAVE WITH PAY**

An appointing authority with the approval of the Commissioner may place an employee on leave with pay any time it is considered necessary for the welfare of the employee or the proper operation of the agency. Appointing authorities that wish to grant any amount of paid leave under this provision must seek the approval of the commissioner of Human Resources in advance, where practicable. Generally, appointing authority should make the request in writing with an explanation as to why this leave is necessary for the welfare of the employee or the proper operation of the agency. In cases where, due to exigent circumstances such as concern for the safety of persons or property, the appointing authority is unable to receive the required approval in advance, the appointing authority should seek retroactive approval as soon as possible. This leave is coded as administrative leave with pay on the attendance and leave record.

### **EXCUSED ABSENCE WITHOUT PAY FOR VOTING MACHINE TECHNICIAN**

A voting machine technician appointed by the county election commission who performs such duties on a part-time basis and who is a full-time state employee shall be excused, without pay (Hour Type 12), from his assigned duties for the day(s) required for the performance of the technician's duties. No employee being excused under this section shall be required to use annual or compensatory leave to perform the technician's duties. An employee may request compensatory or annual leave in lieu of time without.

### **UNEXCUSED ABSENCES**

Absence of an employee after compensatory, annual or sick leave has been requested and denied prior to the occurrence of the leave should always be considered an unexcused absence.

Leave time not approved in advance may be considered an unexcused absence as long as the employee has been informed of the consequences of not obtaining approval in advance at least once prior to the next occurrence. Consequences in this situation include the supervisor's authority to require that leave time not approved in advance be taken without pay and that continued unexcused absences could result in disciplinary action.

While an unexcused absence may be without pay, a supervisor may choose to allow an employee to reduce his leave balance by the amount of time used. In this situation, a notation should be placed on the leave request form or timesheet indicating that the time off is considered an unexcused absence.

Sick leave can never be considered an unexcused absence if the employee presents a valid statement from a doctor.

Authority: T.C.A. 2-9-103; 2-9-106; 8-30-215; 8-30-320; 8-30-215; 8-50-810  
Personnel Rule: 1120-6-.03; 1120-6-.09; 1120-6-.13; 1120-6-.25  
Rev. 1/00

## **CHAPTER 4   ANNUAL LEAVE**

### **ELIGIBILITY TO ACCRUE LEAVE**

Employees scheduled to work one thousand six hundred (1,600) hours or more in a fiscal year, whether compensated on hourly, daily, monthly, or piecework basis, shall accrue leave upon completion of a calendar month of service or major fraction thereof. A major fraction of a month is defined as one-tenth (0.1) of one hour over 50% of the employees' scheduled working hours in any month.

### **EMPLOYEES ELIGIBLE TO ACCRUE LEAVE**

The following employees are eligible to accrue leave:

- A. Employees with regular, temporary provisional and interim appointments who are employed full-time.
- B. Employees serving on full-time temporary appointments accrue leave after completing six months of active service. The first day following completion of six months of service is regarded as the beginning date for the purpose of accruing leave. Each period of temporary employment should be treated separately.
- C. Any part-time or seasonal employee scheduled to work 1600 hours or more in a fiscal year.
- D. Any employee currently eligible to accrue leave who receives a full-time emergency or full-time temporary appointment shall continue to accrue leave, provided there is no break in service.

### **EMPLOYEES INELIGIBLE TO ACCRUE LEAVE**

The following employees are not eligible to accrue leave:

- A. Employees on temporary appointments who have worked less than six (6) months.
- B. Employees on educational leave, with or without pay.
- C. Employees on emergency appointments.
- D. Employees on Division of Claims Administration leave.
- E. Employees on terminal leave.
- F. Employees on military leave without pay.
- G. Employees on special leave without pay.

- H. Employees on maternity leave without pay.
- I. Seasonal or part-time employees scheduled to work less than 1600 hours in a fiscal year.
- J. Employees being paid through the Sick Leave Bank.
- K. Limited term employees (such as commissioners) are not eligible to accrue leave while serving in limited term appointments. However, should these employees later be appointed to a position eligible to accrue leave, their time served in a full-time limited term appointment can be used to establish the proper leave service group code.

## LEAVE ACCRUAL

Leave is accrued on a regular workday basis. One day of leave is equivalent to 7.5 hours for employees on a 37.5 hour per workweek schedule. One day of leave is equal to eight (8.0) hours for employees on a 40 hour per workweek schedule. Employees on any authorized work cycle changing from one schedule to another will have their hourly balances adjusted accordingly.

**Example 1:** (231.5 hours accrued on a 7.5 hour schedule changing to an 8.0 hour schedule):

$231.5 \text{ hours} \times 1.0667 = 249.9 \text{ hours for 8.0 hours schedule}$   
(8.0 divided by 7.5 = 1.0667)

**Example 2:** (231.5 hours accrued on an 8.0 hour schedule changing to a 7.5 hour schedule):

$231.5 \text{ hours} \times 0.9375 = 217.0 \text{ hours for 7.5 hours schedule}$   
(7.5 divided by 8.0 = 0.9375)

## LEAVE ACCUMULATION

An eligible employee earns and accumulates annual leave for each month of service or major fraction thereof.

Group codings, amounts earned and maximum allowable accumulations follow:

**Service Group Code 1:** Employees with less than five (5) years of full-time service accrue annual leave at the rate of one day (7.5 hours) for each month of service or major fraction thereof and may accumulate a maximum of thirty (30) work days (225.0) hours. Employees working an eight (8.0) hour schedule accrue eight (8.0) hours per month and may accumulate a maximum of 240.0 hours.

**Service Group Code 3:** Employees with five (5) years and less than ten (10) years of full-time service accrue annual leave at the rate of one and one-half days (11.3 hours) for each month of service or major fraction thereof and may accumulate a maximum of

thirty-six (36) work days (270.0) hours. Employees working an eight (8.0) hour schedule accrue twelve (12.0) hours per month and may accumulate a maximum of 288.0 hours.

**Service Group Code 4:** Employees with ten (10) years and less than twenty (20) years of full-time service accrue annual leave at the rate of one and three fourths days (13.2 hours) for each month of service or major fraction thereof and may accumulate a maximum of thirty-nine (39) work days (292.5) hours. Employees working an eight (8.0) hour schedule accrue fourteen (14.0) hours per month and may accumulate a maximum of 312.0 hours.

**Service Group Code 5:** Employees with twenty (20) years or more full-time service accrue annual leave at the rate of two days (15.0 hours) for each month of service or major fraction thereof and may accumulate a maximum of forty-two (42) work days (315.0) hours. Employees working an eight (8.0) hour schedule accrue sixteen (16.0) hours per month and may accumulate a maximum of 336.0 hours.

**Service Group Code 6:** Temporary (with less than six months service), emergency and limited term full-time employees are eligible to receive longevity but are not eligible to accrue annual or sick leave.

## RECORDING TIME

Time should be recorded in hours and tenths of hours, i.e., one and one-half hours = 1.5. To assist in recording attendance and leave data accurately and quickly, the following equivalent time chart showing hours and tenths of hours instead of hours and minutes should be used. When deducting against the employee for absences, if the time absent falls between the designated times shown always move back to the previous tenth of an hour. When computing overtime or compensatory time earned of any kind, move to the next higher tenth of an hour over the number of minutes worked if the time falls between the designated tenths. The decimal breakdown on the following chart enables quick determination of equivalent minutes:

### EQUIVALENT TIME CHART

.1 hour =	6 minutes or less
.2 hour =	12 minutes
.3 hour =	18 minutes
.4 hour =	24 minutes
.5 hour =	30 minutes
.6 hour =	36 minutes
.7 hour =	42 minutes
.8 hour =	48 minutes
.9 hour =	54 minutes
1.0 hour =	60 minutes

## **SCHEDULING ANNUAL LEAVE**

Any employee may request to use annual leave at any time by application to his supervisor. The request is subject to approval of the supervisor, who must plan the work under his control and authorize absences only at such times as the employee can be spared.

Annual leave may not be advanced. Annual leave may not be taken until earned, which occurs when the employee completes the major fraction of the month.

Leave requested in advance should be approved prior to the date leave is to be taken. An employee leave request form should be completed and submitted to the supervisor before leave may be approved. Leave for unexpected illness or other extenuating situations may be approved verbally by the supervisor. The first day an employee returns from leave a leave request form must be completed by the employee and the form must then be signed by the supervisor.

## **YEARLY TRANSFER OF ANNUAL LEAVE TO SICK LEAVE**

Annual leave earned in excess of the maximum allowable accumulation for an employee's service group code is transferred to the employee's sick leave account. The employee's last hire month will be the month when the annual leave total exceeding the maximum allowed for a particular service group code transfers to the sick leave account. Employees can accumulate leave in excess of the maximum amount allowed for up to one year before it is transferred to the sick leave account at the end of the day on the last day of the month. Terminating employees must be paid for annual leave in excess of the maximum as terminal leave or in a lump sum payment when their last day worked (includes paid leave other than terminal leave) falls on or before the last day of their hire date month.

## **USING COMPENSATORY LEAVE BEFORE ANNUAL LEAVE**

The use of earned compensatory leave is subject to approval of the department or agency head or designated manager or supervisor. When an employee requests annual leave and compensatory leave is available, the compensatory leave shall be used first, unless the accumulated annual leave balance at the beginning of the pay period is within two days of the maximum accrual for the employee's service group code. When an employee is within two days of the maximum, annual leave may be used throughout the pay period. Any employee whose annual leave balance is not within the two (2) day maximum at the beginning of a pay period must use compensatory leave during the entire pay period. The term "two days" shall mean 15 hours for 37.5 hours per week employees.

Employees' service group codes change on the first day of the month. Therefore, to determine eligibility to use annual leave before compensatory leave, the new group code maximum must be used.

This policy shall not be applied retroactively to any employee who had annual leave converted to sick leave prior to April 16, 1991.



## **ANNUAL LEAVE MAY BE USED AS TERMINAL LEAVE**

Upon separation, an employee is paid for any unused annual leave accumulation unless terminated from State service for gross misconduct. When dismissed for gross misconduct, a detailed report of such conduct must be submitted with the notice of separation to the Department of Human Resources. When an employee is on terminal leave additional leave of any type is not accrued.

## **LEAVE OF ABSENCE FOR PARTICIPATION IN CERTAIN ATHLETIC COMPETITIONS**

An employee may be granted compensatory, annual or special leave without pay if the employee is a group leader, coach, official or athlete who comprises the official delegation of the United States in World, Pan-American or Olympic level competition. The employee is eligible for leave provided that he:

- A. is actively working at the time the request is made:
- B. requests such leave of absence within a reasonable period which, whenever practicable, will be fifteen (15) days prior to the date the employee wishes such leave to commence. The employee shall:
  - 1. provide the actual or anticipated dates of the competition in which he expects to compete or participate, together with the dates of any official training camp period required for preparation for competition;
  - 2. specify the total number of days of leave necessary in order to participate in and prepare for the athletic competition(s) involved; and
  - 3. submit satisfactory evidence of qualification and selection for participation in athletic competitions.

Leave shall be available only for the purpose of preparing for and engaging in the competitions stated above, and in no event shall the total of all such leave exceed the period of the official training camp and competition combined plus a reasonable amount of travel time or ninety (90) calendar days a year, whichever is less.

An employee who has been granted leave and is for any reason unable to further participate in the training period or competition covered by such leave, shall be required to immediately notify his appointing authority of such inability and such employee may be required to return to and resume the duties of his position provided the employee is physically able to do so. An employee who has traveled to locations of actual competition shall not be required to return prior to completion of the competition or until the scheduled departure date of the team of which he is a member, whichever is later.

## **ANNUAL LEAVE TRANSFERABLE BETWEEN STATE AGENCIES**

All annual leave earned while employed in any agency, office or department of the State or in any State college, university or state operated technical school, shall be fully transferable between such agencies, offices, departments, colleges and universities.

Annual leave earned while employed by a local school board in Tennessee is not transferable.

## **USING ANNUAL LEAVE FOR EMPLOYEE MEETINGS**

An officer or employee belonging to an employee association qualified for payroll deduction for association dues is entitled to use two (2) days of accrued annual leave each year to attend a statewide meeting, conference or convention of the association. This leave shall be granted in accordance with the provisions of T.C.A 8-50-110.

## **PROCEDURES FOR ADMINISTERING LEAVE**

A. Establishing a Service Group Code - In establishing an employee's service group code for annual leave, the amount of service accrued by the employee must be determined. All leave accruing service accumulated while employed in any agency, office, or department of the State or in any State college or university shall be credited for purposes of leave computation. Any former member of the General Assembly who, as of July 1, 1988, was eligible to accrue annual leave shall be credited for each year of legislative service as twelve (12) months of full-time service for all time served in the General Assembly.

When an employee changes appointment types or returns from extended leave, the service anniversary and longevity dates should be verified for correctness.

B. Computing Creditable Service - The amount of total leave accruing service (present and prior) with the State of Tennessee should be determined. When special leave has been taken to the extent that an employee did not work for a month or a major fraction that month is not included in computing service, unless the employee was on military, paid educational, or Division of Claims Administration leave. Employment with a local school board in Tennessee is not creditable service in most circumstances. However, for a full-time employee of the Department of Education holding a position requiring three years of experience as a certified professional employee in the Tennessee public school system, prior teaching or administrative experience in Tennessee public schools shall be creditable for purposes of establishing the employee's service group code, not to exceed three years.

C. Establishing Employee's Service Anniversary Date for Changing Employee's Leave Group Category - The service anniversary date is the date in the future when the employee is projected to change leave group codes. It is calculated from the first of the month of the current period of employment for which the first day of annual leave was earned. It may also be calculated from a computed appointment date in the past that is established by crediting all verified periods of creditable service as

though service had been continuous. Once established from a category leave group, this date does not change unless there is a break in service or unless there is a period of special leave without pay in excess of the major fraction of a month.

- D. Reinstating Prior Service - Reinstating prior service may result in changing the service group codes. The employee must notify his department of the prior service and make the request for the modification. Leave adjustments as a result of retroactive changes to service group codes should be made back to the employee's last hire date.

## **ANNUAL LEAVE USED IN PRIOR MONTH**

Annual leave used or earned and not reported in a prior pay period or month should be reported on the employee's current leave record. This type of correction can go back no further than two pay periods prior to the pay period currently being processed for payment. Proper documentation reflecting the need for the correction should become a part of the employee's attendance and leave record. This procedure will eliminate the use of a C-7 form for this transaction.

Any corrections occurring other than the current or prior two pay periods or other types of leave adjustments must be submitted on a C-7 to the Department of Human Resources.

Authority: T.C.A. 8-50-801; 8-50-803; 8-50-807; 8-50-110; 8-50-1101  
Personnel Rules: 1120-6-.10; 1120-6-.11

## **CHAPTER 5 SICK LEAVE**

### **ELIGIBILITY TO ACCRUE SICK LEAVE**

Sick leave is accrued by an employee at the rate of one day (7.5 hours for 37.5 hours per week or 8.0 hours for 40.0 hours per week) for each month or major fraction thereof. Eligibility is the same as for annual leave (see page 10). The rate of accrual for sick leave never changes during the period of employment.

### **USE OF SICK LEAVE**

An appointing authority may grant an eligible employee sick leave if the employee is absent for any of the following reasons:

- A. Personal illness
- B. Disability due to accident
- C. Exposure to a contagious disease
- D. Sickness due to pregnancy (see Chapter 13, Maternity Leave)
- E. Adoption (up to 30 days if the child is one year old or less)
- F. Medical and dental appointments
- G. Medical care, illness or death of one of the following members of the family:
  - Spouse
  - Children
  - Parents
  - Others, who at the discretion of the appointing authority, have a relationship which merits similar consideration
- H. Death of one of the following relatives:
  - Siblings
  - Grandparents
  - Grandchildren
  - Parents-in-law
  - Daughters-in-law
  - Sons-in-law
  - Sisters-in law
  - Brothers-in-law
  - Foster parents
  - Foster brothers and sisters
  - Step parents
  - Step children

In (A) through (D) of this section, sick leave cannot be denied to any employee who presents a statement from a doctor certifying that the employee's health requires him to be absent from work. In (E) of this section, sick leave cannot be denied to any

employee who presents a statement from the adoption agency indicating the required bonding period. In (F) of this section, the period of sick leave approved should be limited to the amount of time necessary for such appointment. In (G) and (H) of this section, refer to section titled "In Instance of Death of Employee's Family" on page 19 for additional information regarding limits of sick leave use for deaths in the family.

#### **SICK LEAVE BALANCE FOR SEPARATING EMPLOYEES**

The sick leave balance for separating employees (other than deceased employees) will be retained as a permanent record in the employee's personnel file. Should the employee be rehired with the State, the sick leave balance may be reinstated in accordance with policy.

#### **EXCESS ANNUAL LEAVE TRANSFERRED TO SICK LEAVE**

An employee accumulating the maximum yearly allowable annual leave hours shall have any additional annual leave hours accrued transferred to his sick leave account at the end of the month in which the employee was last hired. (See Chapter 4).

#### **SICK LEAVE USE AFTER NOTICE OF SEPARATION**

Sick leave may not be used simultaneously with terminal leave. If proper evidence is submitted supporting the use of sick leave after beginning terminal leave, an employee will only be allowed to use sick leave through the original effective date of his/her separation. After the original separation date, employees will be required to take a lump sum payment of the remainder of their compensatory and/or annual leave balances. This applies to any employee who submits notice of resignation or who receives notice of separation from an agency whether terminal leave has begun or not. This also applies to any employee who is receiving a lump sum payment of compensatory and annual leave balances. Terminal leave used prior to the approved sick leave periods should be changed to annual leave and employees are eligible to accrue leave during this period in accordance with standard policies and procedures. Any accrued annual leave would also be included in the lump sum payment at the end of the sick leave period.

The sick leave balance is paid when an employee dies. This balance is paid whether an employee dies while working or on terminal leave.

#### **SICK LEAVE MAY NOT BE ADVANCED**

Sick leave may not be taken before being earned.

#### **SICK LEAVE TRANSFERABLE BETWEEN AGENCIES**

All sick leave earned while employed in any agency, office or department of the State or in any State college, university or state operated technical school, shall be fully transferable between such agencies, offices, departments, colleges and universities.

All earned sick leave accrued by a teacher employed by a local school board in Tennessee may transfer when becoming a State employee. The word "teacher" is defined as any person who was employed as a teacher, librarian, principal, supervisor of instruction, attendance teacher, materials supervising teacher, superintendent or administrative officer whose salary was paid by a county, city or special school district board of education. The word "teacher" as defined shall not apply to a substitute teacher.

Rev. 9/98

## **REINSTATEMENT OF UNUSED ACCUMULATED SICK LEAVE**

A previously accumulated unused sick leave balance shall be granted to any State employee who has worked on a continuous basis for at least one (1) full year, leaves in good standing and returns to State service as an employee scheduled to work at least 1,600 hours and eligible to participate in the leave program. The employee shall be immediately credited with the sick leave balance. Interim employment for less than one (1) year shall not disqualify an employee from receiving such credit of sick leave.

The provision of working one (1) full year shall not apply to a State employee or teacher employed by a local school board in Tennessee who leaves the employment of the State or school board in good standing and becomes a full-time State employee within six (6) months of the date of termination. Such an employee shall immediately be credited with all sick leave to which he was entitled at the time of termination.

To certify that prior sick leave hours are correct, the current or previous employer shall supply documentation and/or verify the records maintained by the Department of Human Resources. (See Appendix D).

Sick leave reinstatement will be denied to any employee who leaves State service through normal dismissal (code 30) or dismissal for gross misconduct (code 36). Sick leave will be reinstated to employees who leave State service for any other reason, regardless of the recommendation for rehire indication.

## **IN INSTANCE OF DEATH IN THE EMPLOYEE'S FAMILY**

The use of sick leave for death of a family member is limited to three (3) days except for deaths of members of the immediate family. Sick leave for the immediate family is normally limited to five (5) days. The immediate family is defined as the following: spouse; children; stepchildren; siblings; grandparents; grandchildren; parents; step parents; foster parents and parents-in-law.

When funeral services are conducted in a locality other than where the employee resides, necessary travel time in addition to the five (5) days may be allowed. Travel documentation explaining the necessity for the extra days should be placed in the employee's leave file.

## **BEREAVEMENT LEAVE**

Bereavement leave will be granted for three (3) days in the event of the death of an employee's immediate family member (defined as spouse, children, stepchildren, siblings, parents, grandparents, grandchildren, stepparents, foster parents and parents-in-law) without charge to the employee's accumulated leave balance. The granting of bereavement leave does not increase the total number of days provided for in the previous section (In Instance of Death in the Employee's Family). An employee must be in a leave accruing position to be eligible for bereavement leave. Separating employees may temporarily interrupt terminal leave status to use bereavement leave.

Example: An employee had a sick leave balance of 90.5 hours. He is granted 3 days (22.5 hours) of paid bereavement leave. The bereavement leave is not deducted from his sick leave, leaving a sick leave balance of 90.5 hours. He also used 2 days (15.0 hours) of sick leave and this is deducted, leaving a sick leave balance of 75.5 hours.

Rev. 3/99

Bereavement leave will be coded as "special with pay" on the attendance and leave record.

## **SICK LEAVE EXCLUDABLE**

Sick leave excludable is used after the sixth (6) month of one continuous illness and such payments are not subject to FICA (social security) taxes. Sick leave excludable is a code 22 on the attendance and leave record.

If code 22 is being charged for a pay period in which a holiday occurs, then code 22 should be charged for that holiday. The leave record should be accompanied by a C-7 to add this sick day back to the leave balance. This adjustment should be made because the employee should not have FICA deducted from his check for the holiday and the C-7 ensures that the leave balance is maintained correctly.

## **DOCTOR'S CERTIFICATE AND OTHER TESTIMONIALS**

Any employee may be required to present evidence in the form of personal affidavits, physician's certificates and/or other testimonials at the request of an appointing authority, the Commissioner of Human Resources or any other appropriate authority to support the reason for any absence during the time for which sick leave was taken.

In situations where an employee has been unable to perform the essential functions of his job due to illness or disability, the appointing authority may require, as a condition of the employee's return to work, medical certification from a health care provider that the employee is able to resume his regular job duties.

Sick leave cannot be denied to any employee who presents a valid statement from a doctor certifying that the employee's health requires absence from work.

## **SICK LEAVE BANK**

The sick leave bank shall provide emergency sick leave to a member employee who has suffered disability due to unplanned personal illness, injury, or quarantine and who has exhausted his personal sick, compensatory and annual leave balances. The member employee must meet the criteria established by the sick leave bank trustees and have been in a without pay status for five (5) days.

The enrollment period is August, September and October each year. To elect to participate, an employee must:

- A. be entitled to accrue leave pursuant to T.C.A. 8-50-802;
- B. have been employed by State government for twelve (12) full months immediately preceding application for participation; and
- C. have a sick leave balance of at least six (6) days as of October 31 of the enrollment period in which applying for membership.

Rev. 6/04

At the time of enrollment, the member employee will have the equivalent of four (4) days of sick leave deducted from his personal accumulation and donated to the sick leave bank. An annual contribution of one sick leave day every October 1 after the first year of enrollment, although this may be waived by the Board of Trustee in any year.

A member of the sick leave bank shall be eligible to make application to the bank for sick leave only after having been a member for thirty (30) calendar days.

Grants of sick leave from the bank shall not be made to any member for elective surgery, illness of any member of the participant's family, or during any period the member is receiving disability benefits from social security, the State retirement plan, or Division of Claims Administration benefits.

Grants are made in increments of twenty (20) days not to exceed the ninety (90) day maximum for any one illness or accident.

Grants of sick leave from the bank shall not exceed ninety (90) days within a twelve (12) month period.

Sick leave used from the sick leave bank shall not constitute creditable service for sick and annual leave accrual or for longevity purposes. An employee using leave from the sick leave bank is not eligible for holiday pay. An employee using leave from the sick leave bank will be paid holiday pay as one of the regularly approved sick leave bank days.

## **TRANSFERRING SICK LEAVE BETWEEN STATE EMPLOYEES**

Effective April 12, 1994, sick leave may be transferred to sick leave bank members who have suffered disability due to unplanned personal illness or injury and who have exhausted all sick, annual and compensatory leave and leave approved through the sick leave bank.

In order to receive sick leave donated from another employee, all of the following criteria must be met. An employee must:

- A. be a current member of the sick leave bank;
- B. have used all accumulated sick , annual and compensatory leave and used all days approved through the sick leave bank for each separate illness or recurring diagnosed illness or accident;
- C. have continuing disability resulting from personal illness or injury and be unable to perform job duties; and
- D. not be receiving any other form of compensation including social security disability benefits, Division of Claims Administration benefits, or compensation

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through the State Retirement Plan or Sick Leave Bank.

Before an employee is eligible to receive donated leave his or her physician must certify that the employee has a disability resulting from personal illness or injury and is unable to perform job duties. Once medical certification is received, the employee is eligible to receive up to 20 consecutive days of leave for which he would otherwise be without pay, consisting of regularly scheduled work days and holidays. From this point forward, the employee will be authorized to use donated sick leave in 20 day increments, with additional medical certification documenting the employee's continued disability required after each 20 day period. The maximum amount which may be transferred to an employee is limited to 90 days for which the employee would not otherwise be paid per separate illness or recurring diagnosed illness or accident. The transfer of sick leave to an employee may not be denied if all eligibility criteria are met.

For employees receiving transferred leave each "day" is defined as 7.5 hours for employees on a 37.5 hour workweek schedule and 8.0 hours for employees on a 40 hour workweek schedule.

### **Criteria for Donating Leave to Another Employee**

In order to donate sick leave to another individual, an employee must agree to donate a minimum of five days of leave (37.5 hours for an employee with a 7.5 hour per day work schedule or 40.0 hours for an employee with an 8.0 hour per day work schedule). The maximum amount of sick leave an employee may donate during his or her state employment is a total of 90 days. A donating employee is not required to be a member of the sick leave bank.

An employee may donate more than one time to a single individual. However, the employee may not donate more than one-half of his leave balance in effect at the point leave is first deducted from this balance and added to the receiving employee's balance. For example, an employee with a 200 hour sick leave balance agrees to donate 75 hours to another individual. This employee may not donate more than a total of 100 hours (one-half of the 200 hour leave balance) to this other individual. If the donating employee wishes to give additional leave to the same employee at a later date, only 25 additional hours may be donated.

In order to facilitate sick leave transfer between employees, the following procedures should be followed:

An employee donating leave to another employee must complete Sick Leave Donation Agreement Form (# PR-0339) with information on the name of the employee to whom leave is being donated and the amount of leave the employee is agreeing to donate. This form must be signed and witnessed by two other individuals that the donating employee is aware of all conditions under which leave is being donated and that the leave is being donated of his own free will. Once completed, the employee should send this form to his agency's personnel officer. Rev. 6/04

The personnel officer must sign the form acknowledging receipt. After verifying that the employee has the leave balance to cover the amount of leave being donated and is not

donating more than one-half of that balance, the form should be forwarded to the Transactions Section of the Department of Human Resources. A copy of the agreement should be placed with the donating employee's personnel file.

Donor forms will be dated and time stamped in the order received. This will determine the order in which sick leave will be deducted from donating employees' leave balances in situations where there are multiple employees agreeing to donate to a single individual.

Department of Human Resources staff will notify the agency employing the person to whom leave is being donated. Before sick leave is officially transferred, the employee receiving the leave must submit a new medical form from his health care provider certifying that the employee continues to be unable to perform job duties. This form should be submitted to the Employee Relations Division of the Department of Human Resources with the words "Continuing Disability for Donated Leave" written in red ink at the top. A new medical form will be required for every twenty days of donated sick leave.

Only the exact amount of leave needed to cover each pay period will be transferred at any given time. At the point of leave transfer, the Department of Human Resources will process leave adjustment forms (C-7's) to deduct the leave from the donating employee's leave balance and add this leave to the receiving employee's balance. Prior to deducting this leave, Department staff will verify that the donating employee still has a sufficient leave balance to cover the amount he or she originally agreed to donate. If less than that amount is available, only the amount meeting eligibility criteria will be deducted. If the person originally agreeing to donate leave is no longer employed with the State, has retired, has transferred to a state agency with a leave system not covered by the provisions of Title 8, Chapter 50, Sections 8 and 9, or no longer has a sufficient leave balance to meet eligibility criteria to donate leave at the time the sick leave is to be deducted, all responsibility to donate this leave is voided. After processing the adjustments, copies of the C-7's will be sent to both the donating and receiving employees' agencies and should be placed in their attendance and leave files.

NOTE: Sick leave may not be transferred retroactively beyond one pay period. An example of this would be an employee who for whom no one has agreed to donate leave at the time his or her leave from the sick leave bank has been exhausted and who then begins a period of approved leave without pay. If another employee later agrees to donate sick leave to this employee, retroactive payment for the value of this leave may not extend beyond one pay period.

The decision to donate sick leave to another individual should be a choice made freely by each employee. Any person attempting to unduly influence another employee to donate leave shall be subject to disciplinary action and any prior agreement made to donate leave under these conditions shall be voided.

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## **Separating Employees Wishing to Donate Leave**

Separating employees wishing to donate leave must meet all of the following conditions:

- A. The separating employee must have a specific employee identified to whom the leave is to be donated;
- B. Leave donated for a separating employee cannot be used beyond his last day worked and the minimum five (5) days (37.5 hours for employees working 7.5 hour days or 40.0 hours for employees working 8.0 hour days) must be exhausted before his last day worked.
- C. The person to whom the leave is to be donated must be eligible to receive the leave (i.e., have exhausted all Sick Leave Bank leave and any other leave) during the period the separating employee is still working.

**Example:** A separating employee has fourteen working days left before his last day worked. He must donate at least five days of sick leave and an eligible employee must completely use this leave before the end of the separating employee's last working day in order for the separating employee to be able to donate the leave.

#### **SICK LEAVE USED IN PRIOR MONTH**

Sick leave used or earned and not reported in a prior pay period or month should be reported on the employee's current leave record. This type of correction can go back no further than two pay periods prior to the pay period currently being processed for payment. Proper documentation reflecting the need for the correction should become a part of the employee's attendance and leave record. This procedure will eliminate the use of a C-7 form for this transaction.

Any corrections occurring other than the current or prior two pay periods or other types of leave adjustments must to be submitted on a C-7 to the Department of Human Resources.

Authority: T.C.A. 8-50-802; 8-50-803; 8-50-804; 8-50-805; 8-50-806; 8-50-808; 8-50-113;  
8-50-901; 8-30-215  
Personnel Rule: 1120-6-.10; 1120-6-.12; 1120-6-.13

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## **CHAPTER 6 FAMILY AND MEDICAL LEAVE ACT**

### **SUMMARY**

The Family and Medical Leave Act (FMLA) was enacted into federal law on February 5, 1993. As a "covered employer" the State of Tennessee is required to comply with this legislation on the Act's effective date of August 5, 1993. The basic tenants of FMLA entitle eligible employees up to twelve workweeks of leave each year for specified family and medical reasons, provide for continued health insurance coverage during the leave period, and require employee reinstatement to the same or an equivalent position once the leave period has ended.

### **EMPLOYEE ELIGIBILITY**

In order to be considered "eligible" under Family and Medical Leave Act (FMLA) guidelines, an employee must (1) have worked for the State of Tennessee for at least 12 months and (2) have worked at least 1,250 hours during the year preceding the start of the leave. The determination of whether an employee meets the eligibility criteria for receiving FMLA leave is based on the amount of service (including prior service) possessed by the employee as of the date the leave actually begins.

The 12 months of required work with the State do not have to be consecutive in order for an employee to be eligible. If an employee is maintained on the payroll for any part of a week, including periods of paid or unpaid leave during which other benefits or compensation are provided by the State (such as Division of Claims Administration Leave or group health plan benefits), that week is considered a week of employment, with 52 weeks of such employment considered equal to 12 months.

In determining "hours worked" for the purposes of FMLA eligibility, all hours actually worked by an employee, including overtime hours, should be calculated. In situations where an employee is considered "exempt" from the overtime provisions of the Fair Labor Standards Act (FLSA) and no record of overtime hours worked has been maintained (such as for an upper level manager ineligible for cash or compensatory overtime compensation under state law), the employee is considered eligible for FMLA leave if he or she has worked for the State at least twelve months. This criteria applies unless clear documentation exists indicating that the employee did not work 1,250 hours during the twelve month period preceding the leave.

In situations where an employee has been laid off, the employee must be recalled or rehired before being eligible for FMLA leave. Under these circumstances, he or she is immediately eligible for FMLA leave for qualifying reasons upon returning to work.

### **LEAVE ENTITLEMENT - QUALIFYING CRITERIA FOR GRANTING LEAVE**

## **Reasons for Which FMLA Leave Must be Granted**

FMLA leave must be granted to an employee requesting leave for any of the following reasons:

- A. The birth of a son or daughter and to care for the newborn child;
- B. The adoptive or foster care placement of a son or daughter with the employee;
- C. To care for the employee's spouse, son, daughter, or parent with a serious health condition;
- D. The employee has a serious health condition resulting in his or her inability to perform one or more essential job functions.

The right to take FMLA leave applies equally to male and female employees.

## **FMLA Definition of Family Members**

Spouse: Husband or wife as defined or recognized under Tennessee law for purposes of marriage.

Parent: Biological parent or an individual who currently stands or stood in place of an absent parent to an employee when the employee was a child. The definition does not include parents-in-law.

Son/Daughter: Biological, adopted, foster child, stepchild\*, legal ward, or child of a person standing in place of an absent parent who is either under age 18 or age 18 or older and "incapable of self-care because of a mental or physical disability."

A person standing in place of an absent parent is not required to have a biological or legal relationship with a child - the only criteria is that the person have "day-to-day responsibilities to care for and financially support a child" or have had that responsibility for the employee when the employee was a child.

An appointing authority may require an employee requesting FMLA leave to provide reasonable documentation confirming the family relationship including such items as a written statement from the employee, a child's birth certificate and relevant court documents.

\*An employee who marries and requests FMLA leave to be with a new stepchild will only be eligible for this leave if he or she formally adopts the stepchild. However, if the stepchild develops a serious health condition, the employee is entitled to FMLA leave to care for the child, even when the child has not been adopted.

## **Birth of a Son or Daughter**

In addition to leave taken after the birth of a child, FMLA leave may be taken by an expectant mother for the purpose of prenatal visits and in situations where a serious health condition prevents her from performing her job duties prior to the child's birth.

### **Adoptive or Foster Care Placement**

FMLA leave may be taken prior to an adoptive or foster care placement if the leave is necessary for the placement to proceed. This would include granting leave for required counseling sessions, court appearances, and legal or medical consultations.

- A. Adoption: There is no requirement in FMLA that the source of an adoption be from a licensed adoption agency in order for an employee to be eligible for FMLA leave.
- B. Foster Care: This is defined as "24-hour care for children in substitution for, and away from, their parents or guardian." FMLA requires that this placement be made by or in agreement with the State and that State action be involved in the removal of the child from parental custody.

### **FMLA Definition of "A Serious Health Condition"**

The FMLA defines a "serious health condition" as an illness, injury, impairment, or physical or mental condition involving one of the following:

- A. A period of incapacity or treatment connected with inpatient care (overnight stay) in a hospital, hospice or residential medical care facility.
- B. Continuing treatment by a health care provider.

"Incapacity" is defined in the Family and Medical Leave Act as the inability to work, attend school or perform any regular activities due to the serious health condition, treatment of the condition or recovery from the condition.

### **FMLA Definition of "Continuing Treatment by a Health Care Provider"**

The FMLA defines continuing treatment by a health care provider as any of the following:

- A. A period of incapacity of more than three consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves: (1) treatment two or more times by a health care provider, treatment by a nurse or physician's assistant under direct supervision of a health care provider or treatment by a provider of health services (such as a physical therapist) under orders of or referral by a health care provider; or (2) treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider.
- B. Any period of incapacity due to pregnancy or for prenatal care.

- C. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A "chronic" condition is defined as one which (1) requires periodic visits for treatment by a health care provider or by a nurse or physician's assistant under direct supervision of a health care provider, (2) continues over an extended period of time (including recurring episodes of a single underlying condition, and which (3) may cause episodic rather than continuing periods of incapacity (such as asthma, diabetes and epilepsy).
- D. A period of incapacity which is long-term due to a condition for which treatment may not be effective. In this situation the employee or family member must be under the continuing supervision of but not need to be receiving active treatment by a health care provider. Examples include Alzheimer's, severe stroke and the terminal stages of a disease.
- E. Any period of absence to receive multiple treatments (including periods of recovery from treatments) by a health care provider or by a provider of health services under orders of or referral by a health care provider, either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than three calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy or radiation treatment), severe arthritis (physical therapy) and kidney disease (dialysis).

In situations where an employee or family member is under "continuing treatment by a health care provider" as defined in this section, absence from work due to mental illness caused by stress, allergies and substance abuse all qualify as serious health conditions for which FMLA leave must be granted. In the case of substance abuse, however, only the time absent from work due to treatment is qualifying time off and not periods of incapacity resulting from use of the substance. Also, an employee with a substance abuse problem is not protected under FMLA from disciplinary action resulting from such substance abuse. When an agency has a non-discriminatory policy that provides for an employee's termination for substance abuse under certain circumstances and this policy has been communicated to all employees, an appointing authority may terminate the employee, whether or not the employee is on FMLA leave. The appointing authority cannot, however, take action against the employee for exercising his or her right to take FMLA leave for treatment of the substance abuse.

When an employee is absent from work due to pregnancy, prenatal care or due to a chronic health condition, leave taken qualifies as FMLA leave even if the employee or family member does not receive treatment from a health care provider during the absence and even if the absence lasts less than three days. For example, an employee with asthma may be unable to report to work due to onset of an asthma attack he or she can treat at home. Even though the employee did not visit a health care provider and was absent for less than three days, the time off qualifies as FMLA leave. Another example is an employee unable to report to work due to severe morning sickness resulting from pregnancy. Although this absence was less than three days and the employee did not need to visit a health care provider, this time off qualifies as FMLA leave.

### **FMLA Definition of a "Health Care Provider"**

A "Health Care Provider" includes the following (1) A doctor of medicine or osteopathy authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices; (2) podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to certain types of treatment) authorized to practice under state law and performing within the scope of their practice as defined under state law; (3) nurse practitioners, nurse midwives and clinical social workers authorized to practice under state law and performing within the scope of their practice as defined under state law; and (4) Christian Science practitioners listed with the First Church of Christ Scientist in Boston, Massachusetts.

### **LEAVE ENTITLEMENT - LIMITATIONS ON LENGTH AND DURATION**

Eligible employees are entitled to up to a total of twelve workweeks of leave during a twelve month period. This is equivalent to 60 workdays, including holidays. For a State employee, the initial twelve month period starts on the date the employee's FMLA leave first begins and extends twelve months forward from that date. A new twelve month period would begin the first time FMLA leave is taken after completion of any previous twelve month period. For example, an employee who first uses FMLA leave on October 7, 1993, would have their twelve month period begin on that date and continue through October 6, 1994. If this employee subsequently needed to use FMLA leave starting on December 2, 1994, a new twelve month period would be established from that date forward through December 1, 1995.

In situations where less than one workweek of leave is taken at any given time, appointing authorities have the option not to count these amounts of leave against the total twelve week entitlement, depending on the specific situation.

The right to take FMLA leave begins on the August 5, 1993, effective date. Any leave taken prior to that time cannot be counted against an employee's twelve week entitlement for the year.

### **Limitations on FMLA Leave Entitlement for Birth of a Child or Adoption or Foster Care Placement**

Leave entitlement for the birth of a child or for adoption or foster care placement expires at the end of the twelve month period beginning on the date of the birth or placement. FMLA leave for these reasons must be concluded within this time period.

### **FMLA Leave Conditions When Both Spouses are State Employees**

Spouses who are both State employees are limited to a combined total of twelve weeks of FMLA leave during a twelve month period if the leave is taken for the following reasons: (1) birth of a child or for care of the child after birth; (2) adoptive or foster care placement of a son or daughter or for care of the child after placement; or (3) to care for a parent (not a parent-in-law) with a serious health condition.



However, if each spouse uses leave for one of the reasons listed in the previous paragraph and needs to use leave for a different reason later in the twelve month period (such as to care for the employee's own serious health condition or that of a spouse, son, or daughter) he or she is entitled to the difference between the amount each took individually for birth, adoption, or to care for an ill parent and a total of twelve weeks of leave.

For example, if each spouse uses six weeks of leave (totaling twelve weeks) for the birth of a child, each spouse can take an additional six weeks of leave for a serious personal illness.

### **Use of Intermittent Leave**

A State employee may take intermittent FMLA leave or have a reduced leave schedule over a twelve month time period only in situations where the purpose of the leave is medically necessary to care for an employee's own serious health condition or the serious health condition of a family member. The situation must be one in which the employee's or family member's medical needs can best be treated through an intermittent or reduced leave schedule. State employees may not use intermittent FMLA leave following the birth of a child or adoptive or foster care placement for any reason other than medical necessity.

In situations where intermittent leave is granted, appointing authorities have the option not to count leave amounts of less than one workday against the twelve week entitlement total, depending on the employee's situation. For example, if an employee uses two hours of leave three times a week to go to physical therapy, the appointing authority has the option not to count any of this leave against the twelve week entitlement.

If an employee requests intermittent leave or leave resulting in a reduced work schedule, based on the need for planned medical treatment including a period of recovery from a serious health condition, the appointing authority may require that the employee transfer temporarily to another position for which the employee is qualified and which better accommodates the employee's need for recurring leave periods. This temporary position must have equivalent pay and benefits, but need not have equivalent duties. Under no circumstances shall an appointing authority transfer an employee to an alternative position with the intent of discouraging the employee from taking leave or causing hardship to the employee.

An employee may not be required to take more intermittent leave than necessary to address the circumstance that caused the need for leave.

### **CRITERIA FOR USING PAID AND UNPAID FAMILY LEAVE**

Family and medical leave may be paid or unpaid, depending upon certain conditions. An employee with no accumulated sick or annual leave balances must take his or her leave as unpaid. An employee who does possess a leave balance has the option,

under certain conditions, of using this accumulated leave as FMLA leave and remaining in a paid status. Specific conditions regarding the type of accumulated leave that may be taken are covered below.

- A. Before an employee can go on unpaid leave, all accumulated compensatory leave must be used. (See following section on "Counting Paid and Unpaid Leave Toward the Employee's Twelve Week Entitlement" for specific restrictions on designating compensatory leave). The employee has the option, however, of retaining his or her sick and annual leave balances.
- B. If an employee chooses to use accumulated leave as FMLA leave, the leave used is subject to existing state laws and regulations regarding the type and amount of leave that can be used under specific circumstances.

Example: A female employee requests twelve weeks of FMLA leave following the birth of her child. Under existing state law, only thirty days (six workweeks) of sick leave may be used to care for a well child following childbirth. Thus, the employee can only use six weeks of sick leave as FMLA leave and the remaining six week balance must be taken as annual or unpaid leave.

Under current state law, this employee is entitled to up to four months of maternity leave. Therefore, once the twelve week FMLA entitlement is completed, this employee is still eligible to take an additional four weeks of maternity leave. However, the state is under no obligation to provide health insurance benefits during this period, should the leave be without pay.

### **Counting Paid and Unpaid Leave Toward the Employee's Twelve Week Leave Entitlement**

The appointing authority of each agency is responsible for designating paid and unpaid leave as FMLA leave. This designation must be based only on information provided by the employee or the employee's spokesperson. A "spokesperson" includes the employee's spouse, adult child, parent, doctor or other individual providing information when the employee is incapacitated.

An employee requesting unpaid FMLA leave must explain the reasons why the leave is needed in order that the appointing authority may be able to determine leave eligibility under the provisions of the Act. If qualifying, this time can be counted against the employee's twelve week leave entitlement. If the employee fails to explain the reasons leave is needed, FMLA leave may be denied.

Paid sick or annual leave can only be counted against the twelve week leave entitlement if the employee personally provides enough information for the appointing authority to determine that the leave requested is for family or medical reasons.

An employee may request to use accumulated compensatory leave for family and medical reasons and is required to use such leave before being granted leave without pay. However, an appointing authority may not designate any compensatory leave used for family and medical reasons against the twelve week entitlement. Under FMLA

provisions, this type of leave is considered a form of compensation rather than a benefit. As such, employers are not considered to have the right to designate this leave toward fulfilling a benefit entitlement.

An appointing authority may also designate time an employee is receiving worker's compensation benefits as FMLA leave when qualifying conditions are met. If an employee's injury qualifies as FMLA leave, the employee cannot be forced to return to light duty work before the leave expires (although refusal to accept light duty may affect worker's compensation benefits). If the employee freely accepts light duty work before his or her twelve weeks of FMLA leave expire, the employee still has the right to return to his or her original or an equivalent position within twelve weeks from the date FMLA leave began.

An appointing authority has the option not to designate the first two weeks (ten business days) of FMLA qualifying leave against the employee's twelve week entitlement. Any additional FMLA qualifying leave needed by an employee (paid or unpaid) **must** be designated.

### **Time Limitations for Appointing Authority to Designate Paid Leave as FMLA Leave**

The decision to designate paid leave as FMLA leave must be made by the appointing authority as soon as possible after sufficient information is available to determine that the leave requested is for a reason covered by FMLA guidelines. At the point sufficient information has been obtained, the appointing authority must notify the employee within two business days that the leave will be designated as FMLA leave and counted toward the twelve week entitlement.

The employee may initially be notified of the FMLA designation either orally or in writing. If notified orally, however, the appointing authority must follow up with written notification no later than the following payday; if the next payday is less than one week after the oral notice, the appointing authority must notify the employee no later than the subsequent payday.

FMLA leave designation should be made before the leave period begins, unless the appointing authority does not have enough information at the time to make this determination. If the appointing authority has knowledge that a request for paid leave is for FMLA reasons at the point the employee either gives notice or actually begins the leave period, and fails to designate the leave as FMLA leave at that time, any leave already used may not be designated retroactively as FMLA leave. In this situation, only leave used at the point the employee is notified may be designated as FMLA leave and counted toward the twelve week entitlement. Employees affected by this situation are fully protected by the provisions of the Act for all leave taken prior to being formally notified of the leave designation, even though this time off cannot be counted toward the twelve week entitlement.

If the appointing authority learns that paid leave is for FMLA reasons after the leave period has begun, the entire or some portion of the leave may be retroactively counted as FMLA leave to the extent that the leave period qualified as FMLA leave.

The appointing authority may only designate leave as FMLA leave after an employee has returned to work in the following circumstances:

- A. The appointing authority does not learn that an employee's absence was due to FMLA reasons until the employee returns to work. If the appointing authority notifies the employee of the leave designation within two business days of the employee's return, the leave may be designated retroactively. If an employee returning to work did not inform the appointing authority prior to the leave period that the leave was for FMLA reasons and he or she wants the leave designated as FMLA leave, the employee must notify the appointing authority within two business days of returning to work of the reason for the leave. If the employee does not notify the appointing authority within this time frame, he or she will not be protected by the provisions of the Act.
- B. If the appointing authority knows the reason for the leave but has not been able to confirm that the leave qualifies under FMLA, or medical certification or second or third opinions have been requested but not yet received, the appointing authority should make a preliminary designation and notify the employee of this designation at the time the leave begins. When information arrives confirming that the leave used is for FMLA reasons, the preliminary designation then becomes final. If the requested information fails to confirm that the leave needed is for FMLA reasons, the appointing authority must withdraw the designation in writing.

## **HEALTH BENEFIT REQUIREMENTS**

For the duration of FMLA leave, the State is required to maintain an employee's health coverage under the State Group Insurance Plan under the same conditions coverage would have been provided if the employee had continued working. Policy information regarding health insurance coverage in relation to the provisions of FMLA is provided by the Division of Insurance Administration (DIA) in the Department of Finance and Administration.

It is very important that the appointing authority (or designee) communicate approval of FMLA leave to the insurance preparer. That individual will notify DIA of the approval so that the collection method can be changed. If DIA is not notified in a timely manner, the premium will be 100% force collected from the agency where the employee works or in some cases could cause the employee's insurance to terminate.

An agency's obligation to maintain health insurance coverage ceases under FMLA if an employee's premium payment is more than 30 days late. Before an agency can terminate coverage for an employee with a late premium, however, the appointing authority must provide written notice to the employee that the payment has not been received. This notice must be mailed at least 15 days before coverage is to end and should indicate that coverage will be dropped on a specified date at least 15 days after the date of the letter unless payment is received.

## **JOB RESTORATION REQUIREMENTS**

Upon return from FMLA leave, an employee must be restored to his or her original position or to an equivalent position which is *virtually identical* in terms of pay, benefits and other employment terms and conditions. This includes restoration to a position having the same or substantially similar duties and responsibilities and having substantially equivalent skill, effort, responsibility and authority.

An employee returning from FMLA leave is entitled to any general increases that all other State employees have received during the period the employee was on leave. He or she is also entitled to shift or work schedule assignments equivalent to those in effect prior to the beginning of the leave period and to a work location assignment geographically close to the one where previously employed.

If an employee can no longer perform the essential functions of the position because of a physical or mental condition, including the continuation of a serious health condition, the employee has no rights to job restoration under FMLA provisions. In this situation, however, the employee may have certain rights under the provisions of the Americans With Disabilities Act (ADA) which must be taken into consideration.

In situations where an employee notifies the appointing authority that he or she is not returning to work, the obligation to restore the employee to a position and to maintain health benefits (subject to COBRA requirements) ends. Should the employee indicate he or she is unable to return to work but continues to want to return, restoration requirements and health benefits remain in effect through the end of the twelve week FMLA leave period.

NOTE: An employee has no greater right to job restoration with equivalent benefits and conditions of employment than he or she would have had if continuously employed. Thus, if a work location is closed, a shift eliminated, overall work hours for an entire unit reduced, or positions abolished through a reduction in force, the employee is only entitled to conditions that would have been in effect for the employee if the leave had never been taken.

For example, if an employee's shift is eliminated during the time period that leave was taken, the employee is not entitled to assignment to the previous shift's work hours or to shift differential pay when he or she returns from leave that other employees formerly on the shift no longer receive. However, the employee is entitled to employment in a position meeting all other previous employment conditions.

In layoff situations, obligations to continue an employee's period of FMLA leave end with the effective date of the layoff.

### **Job Restoration for Employees Leased from a Temporary Agency**

If an agency uses an employee from a temporary agency and that employee goes on FMLA leave, the employee is entitled to return to the same assignment as the one held before beginning the FMLA leave period if the agency is still using temporary services at the point the employee is ready to return to work.

## **EMPLOYEE NOTIFICATION REQUIREMENTS**

When the need for unpaid leave is foreseeable, an employee must provide at least thirty days advance notice prior to the date the leave is to begin. In situations where thirty day notification is not possible because the employee has no knowledge of the exact time when the leave will need to begin or because of a medical emergency, notice must be given as soon as practicable, normally within one or two business days of when the employee knows the date leave will be needed.

The employee should notify the supervisor of the need for leave and the anticipated timing and duration of the leave. The supervisor may request additional information to determine if the employee is requesting FMLA leave specifically and to obtain the necessary details of the leave being taken.

Employees failing to provide notice of the need for FMLA leave within the required time frame are subject to disciplinary action; however, they may not be denied the leave.

When an employee chooses to use accumulated sick and annual leave balances toward the twelve week entitlement, State laws and policies regarding notification required to use this leave apply.

### **Notification Prior to Return to Work**

An employee may not be required to take more leave than necessary to address circumstances resulting in the need for leave. If an employee is returning to work sooner than expected, the employee must give the appointing authority two business days notice of the changed circumstances before the appointing authority is required to restore the employee to his or her former or comparable position.

## **EMPLOYEE MEDICAL CERTIFICATION REQUIREMENTS**

### **Situations Where Appointing Authority May Require Medical Certification**

The appointing authority may require that an employee's request for leave be supported by certification from a health care provider in situations where the leave is requested to care for the employee's seriously ill spouse, son, daughter, or parent, or due to the employee's personal serious health condition that makes the employee unable to perform one or more of the essential job functions of the employee's position. The appointing authority must give notice of the requirement to provide medical certification each time certification is required. This notification must be in writing at certain times, as covered in the section on "Requirements for Providing Information of FMLA Rights and Responsibilities" of this policy. An appointing authority's oral request for an employee to furnish subsequent medical certification information is sufficient.

When the need for leave is foreseeable and at least thirty days notice has been provided the employee should provide medical certification before the leave begins.. When this is not possible the employee must provide this information within the time frame requested by the appointing authority. At least fifteen calendar days must be allowed for the

employee to provide requested medical certification unless this is not possible under the circumstances (such as an employee's personal health condition preventing his or her ability to obtain the necessary information in a timely manner.)

Any request for medical certification should be made at the time the employee requests leave or within two business days of this date. If the leave was unforeseen, the certification should be requested within two business days after the leave has begun. If the appointing authority has reason to question the appropriateness of the leave or its duration, certification may be requested at a later date. An employee should be advised of the consequences of not providing medical certification at the time the certification is requested.

### **Allowable Medical Certification Information**

The appointing authority may request only the following information from a health care provider certifying an employee's personal serious health condition or that of a son, daughter, or parent. A sample form is provided should be used to obtain this information:

- A. Certification as to which part of the definition of a "serious health condition" applies to the patient's condition and the medical facts supporting the certification.
- B. The approximate date the serious health condition began and its probable duration, including the probable duration of the patient's present incapacity.

Whether it will be necessary for the employee to take intermittent leave or work on a reduced work schedule and the probable duration of such a schedule.

If the condition is pregnancy or a chronic condition, whether the patient is presently incapacitated and the likely duration and frequency of periods of incapacity.

- C. If additional treatments will be required for the condition and an estimate of the probable number of treatments.

If the patient's incapacity will be intermittent or require a reduced work schedule, an estimate of the probable number of and interval between such treatments and period required for recovery.

If any of the treatments listed above will be provided by another provider of health services, the nature of the treatments.

If a regimen of continuing treatment by the patient is required under the supervision of the health care provider and a description of the regimen.

- D. If medical leave is required because of the employee's own condition, information may be requested on (1) whether the employee is unable to perform work of any kind, (2) unable to perform any one or more of the essential functions of the position, including a statement of the essential functions the employee is unable to perform, and (3) if the employee must be absent from work for treatment.

- E. If the leave is required to care for a family member, information may be requested on whether the patient requires assistance for basic medical or personal needs or safety, or for transportation or, if not, whether the employee's presence to provide psychological comfort would be beneficial to the patient or assist in his or her recovery. The employee must provide information on the care he or she will perform and an estimate of the time period involved.

If the employee's family member will need care only intermittently or on a reduced leave schedule, the probable duration of the need.

Once an employee has submitted a complete medical certification document signed by the employee's or family member's health care provider, the appointing authority may not request any additional information from that health care provider. With the employee's or family member's permission, however, a health care provider representing the employer may contact the employee's health care provider to verify the authenticity of or clarify the medical certification. The only situation in which an appointing authority is allowed to contact an employee's health care provider directly is in the case of a worker's compensation injury.

### **Requesting Second and Third Opinions**

If the appointing authority has reason to question the validity of the medical certification or if the employee refuses to grant the employer's health care provider permission to contact the employee's health care provider concerning the medical certification, the employee may be required to obtain a second opinion from another health care provider at the agency's expense. Although the appointing authority may select the health care provider to provide the second opinion, the provider selected cannot be employed by the State of Tennessee on a regular basis or be under any contract or agreement with the State to provide second opinion services, in most circumstances.

If the opinions of the employee's and appointing authority's health care providers differ, the appointing authority may obtain another certification from a third health care provider at the agency's expense. This health care provider must be one agreed upon by both parties and the third provider's opinion is considered final and binding.

Pending receipt of the second or third opinions, the employee is provisionally entitled to the benefits of the Act, including maintenance of group health insurance benefits. If the certifications do not establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave and may be treated as paid or unpaid leave under the State's established leave policies.

The appointing authority is required to provide the employee with a copy of the second and third opinions, where applicable, upon request by the employee. Requested copies must be provided within two business days of the request, unless extenuating circumstances prevent this from being possible.



When the appointing authority requires the employee to obtain a second or third opinion, the employee must use paid leave or be in a without pay status and the appointing authority must pay for any reasonable out-of-pocket travel expenses.

### **Requesting Subsequent Recertifications of Medical Conditions**

The appointing authority may request recertification of a medical condition as considered necessary. For most situations, the intervals between these requests can be no less than thirty days, except in situations where (1) the employee requests an extension of leave; (2) circumstances described in the original certification have changed significantly, or (3) the appointing authority has obtained information conflicting with the validity of the certification.

In the case of pregnancy, chronic or permanent long-term medical conditions, the appointing authority may request recertification no more than once every 30 days unless (1) circumstances described in the previous certification have changed significantly or (2) the appointing authority receives information which casts doubt on the employee's stated reason for the absence. If the minimum duration of the period of incapacity specified on the medical certification is more than 30 days, the appointing authority may not request recertification until that minimum duration has passed, unless one of the conditions in the first paragraph of this section is met. When FMLA leave is taken intermittently by an employee who is pregnant or who has a chronic or permanent long-term medical condition, the appointing authority may not request recertification in less than the minimum period specified on the certification as necessary for such leave unless one of the conditions in the first paragraph of this section is met.

### **Employee Failure to Provide Medical Certification**

In situations of foreseeable leave, if an employee fails to provide certification within the requested allowable time frame (minimally fifteen calendar days), he or she may be denied leave until certification is provided.

When the need for leave is unforeseeable, an employee must provide certification within the reasonable period of time set by the appointing authority, based on the particular medical circumstances. An employee failing to provide certification within this time frame may be denied leave continuation.

### **Requiring Medical Certification for Reinstatement**

In situations where an employee is on FMLA leave due to a serious health condition preventing the performance of his or her job duties, the appointing authority may require, as a condition of the employee's restoration to a position, medical certification from a health care provider that the employee is able to resume work. In order for this requirement to be permissible under FMLA guidelines, the appointing authority must have uniform policies or practices in place that are consistently applied for all employees taking leave under certain specific conditions. When an appointing authority does have such policies, an employee requesting FMLA leave must be notified of the requirement for medical certification prior to job restoration, either before or immediately after the

leave period begins. The appointing authority's requirements for employees returning to work must be job-related and consistent with business necessity, as required under ADA provisions.

When notification has been properly given and policies applied uniformly, the appointing authority may deny position restoration to an employee until medical certification is submitted.

## **PROHIBITION AGAINST DISCRIMINATORY PRACTICES**

Provisions of FMLA prohibit interference with an employee's rights to family and medical leave under the law and from discrimination against an employee using family and medical leave. Appointing authorities should review existing internal agency policies and practices to ensure compliance.

## **REQUIREMENTS FOR PROVIDING INFORMATION ON FMLA RIGHTS AND RESPONSIBILITIES**

The appointing authority must post notices explaining FMLA provisions and providing information concerning procedures for filing complaints on violations of the Act with the Wage and Hour Division of the U.S. Department of Labor. These notices must be posted in conspicuous places where employees and applicants can easily access the information provided.

If an agency has an employee handbook or other document explaining employee benefits or leave rights, information regarding FMLA entitlements and employee obligations under the Act must be included. If an agency does not have a handbook or other policy document, the appointing authority must provide written guidance to the employee regarding his or her rights and obligations under the Family and Medical Leave Act every time the employee is notified of the FMLA leave designation.

The appointing authority must also provide the employee with written notice detailing specific obligations of the employee and consequences of failure to meet these obligations. This information must be provided no less than the first time in each six month period that an employee gives notice of the need for FMLA leave. The following information must be included: (1) that the leave will be counted against the employee's FMLA leave entitlement; (2) any requirements for furnishing medical certification of a serious health condition and information regarding the consequences of not providing this information; (3) the employee's option to substitute paid leave in specific situations and conditions related to the substitution; (4) the requirement for the employee to make health insurance premium payments, procedures for making these payments and possible consequences of failing to make these payments in a timely manner; (5) any requirement to present medical certification as a condition of job restoration following conclusion of the leave period; (6) the employee's right to job restoration upon return from leave; and (7) the employee's potential liability for the employer's portion of the health insurance premium payments should the employee fail to return to work after taking FMLA leave.

The notice must be given within a reasonable time after the employee notifies the appointing authority of the need for FMLA leave, preferably between one and two business days. If the leave has already begun, the notice should be mailed to the employee's address of record.

If the specific information originally provided in the notice changes due to a subsequent period of FMLA leave during the six month period, the appointing authority must notify the employee within two business days of receiving notification of the need for additional FMLA leave of any changes that are being made to the original information provided. For example, if the initial leave period was paid and the subsequent leave period is unpaid, the employee must be notified of the need to pay his or her portion of the insurance premium.

If the initial notice to the employee for the six month period and the agency's handbook or other written documentation clearly indicate the agency's requirements for the employee to provide medical certification or "fitness for duty" information, then subsequent notification to the employee of these requirements is not necessary. If, however, this information has never been provided to the employee, then any requirements for medical certification or "fitness for duty" information must be provided in writing to the employee every time the employee notifies the appointing authority of the need for leave.

If the appointing authority does not provide the employee with required notices, no action can be taken against the employee for failure to comply with the employee's obligations.

## **RECORD-KEEPING REQUIREMENTS**

The appointing authority in each agency is responsible for maintaining required records for all employees using FMLA leave. FMLA leave will not be tracked statewide by the State Employee Information System or Payroll System and must be maintained manually at the agency level. In addition to basic payroll and employee data and policy documentation, the following records are required:

- A. Dates FMLA leave is taken by each employee and clear designation of this time as FMLA leave.
- B. Hours of leave taken, if the amount is less than one full day.
- C. Copies of employee notices of FMLA leave sent to the appointing authority, if in writing, and copies of general and specific notices given to employees as required under FMLA guidelines.
- D. Records of any dispute between the employee and appointing authority regarding the designation of leave as FMLA leave.
- E. Any work schedule agreed upon by the appointing authority and employee, in situations where intermittent leave or leave on a reduced work schedule has been approved.

- F. Medical certification, recertification, and medical history documentation (must be kept separately from other personnel information due to confidentiality.)

## **EMPLOYMENT INTERVIEW**

The appointing authority cannot ask a job applicant if he or she has ever applied for or taken FMLA leave in the past.

## **SPECIAL RULES APPLYING TO SPECIFIC EMPLOYEES OF SCHOOLS**

The Act includes special provisions regarding the taking of FMLA leave for instructional employees of Local Education Agencies. Appointing authorities of agencies where this criteria applies must implement the provisions found in 29 CFR Part 825; Subpart F, which provides the U.S. Department of Labor's rules regarding these employees.

The Family Medical Leave Act (FMLA) was enacted into federal law on February 5, 1993. As a "covered employer" the State of Tennessee is required to comply with this legislation on the Act's effective date of August 5, 1993. The basic tenants of FMLA entitle eligible employees up to twelve workweeks of leave each year for specified family and medical reasons, provide for continued health insurance coverage during the leave period, and require employee reinstatement to the same or an equivalent position once the leave period has ended.

Authority: T.C.A. 8-30-215  
Personnel Rule: 1120-6-.22

## **CHAPTER 7 HOLIDAYS**

### **LEGAL HOLIDAYS**

The Commissioner of Human Resources, with approval of the Governor, shall determine which legal holidays may be observed by the closing of State offices. The Governor may substitute the day after Thanksgiving for Columbus Day holiday for the purpose of closing State offices. This decision will be made each year.

### **LIST OF HOLIDAYS**

The following days have been designated by the General Assembly as legal holidays.

New Year's Day	January 1
Dr. Martin L. King Day	Third Monday in January
Washington's Day	Third Monday in February
Good Friday	Friday before Easter
Memorial or Decoration Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Columbus Day	Second Monday in October
Veterans' Day	November 11
Thanksgiving Day	Fourth Thursday in November
Christmas Day	December 25

When a holiday falls on Saturday, the Friday before the holiday is substituted. When the holiday falls on Sunday, the Monday following the holiday is substituted.

### **HOLIDAY CREDIT FOR EXEMPT EXECUTIVE LEVEL EMPLOYEES**

Executive level employees regularly scheduled to work on a holiday may have the holiday rescheduled if they worked on the holiday.

### **ELIGIBILITY FOR HOLIDAY BENEFITS**

- A. Employees must be in an active pay status for the major portion of their scheduled work day immediately preceding that holiday to be eligible for the benefits of that holiday.

When a half day holiday occurs, employee must be in an active pay status for the major portion of his scheduled work day immediately preceding the holiday or the employee must be in an active pay status for the major portion of his scheduled work hours immediately preceding the holiday hours for the half day.

In determining eligibility for full day holidays when the previously scheduled work day includes a half day holiday, the employee must be in an active pay status for the major portion of his scheduled work hours immediately preceding the holiday hours for the half day.

For the purpose of the following examples, the Christmas holidays are for one-half day on the 22nd, the 23rd and 24th is the weekend, and the 25th and 26th are full holidays:

**Example 1:**

Day/Date	S17	M18	T19	W20	T21	F22H	S23	TOTAL
Scheduled		7.5	7.5	7.5	7.5	7.5		37.5
Worked		7.5	7.5	7.5	2.5	4.0		29.0
Non-Duty					5.0	3.5		8.5
Code					w/o	H/sp/wp		

  

Day/Date	S24	M25H	T26H	W27	T28	F29	S30	TOTAL
Scheduled		7.5	7.5	7.5	7.5	7.5		37.5
Worked				7.5	7.5	7.5		22.5
Non-Duty		7.5	7.5					15.0
Code		H	H					
		15 H/sp/wp						

Since the employee was in an active pay status for the 4.0 hours immediately preceding the holiday hours for the half day, the employee is due 3.5 hours of holiday pay for the 22nd, 7.5 hours of holiday pay for the 25th and 7.5 hours of holiday pay for the 26th, for a total of 18.5 hours.

**Example 2:**

Day/Date	S17	M18	T19	W20	T21	F22H	S23	TOTAL
Scheduled		7.5	7.5	7.5	7.5	7.5		37.5
Worked		7.5	7.5	7.5	7.5	1.5		31.5
Non-Duty						6.0		6.0
Code						3.5 H/sp/wp		
						2.5 w/o		

  

Day/Date	S24	M25H	T26H	W27	T28	F29	S30	TOTAL
Scheduled		7.5	7.5	7.5	7.5	7.5		37.5
Worked				7.5	7.5	7.5		30.0
Non-Duty		7.5	7.5					15.0
Code		w/o	w/o					
		15.0w/o						

The employee is due 3.5 hours of holiday pay for the 22nd, since he was in an active pay status for the major portion of the 21st. The employee is not eligible for holiday pay on the 25th or 26th since he was not in an active pay status for

the major portion of his scheduled work hours immediately preceding the holiday hours on the 22nd.

- B. The accruing of annual and sick leave will allow hourly employees who are scheduled 1600 hours to receive holiday pay. Part-time or seasonal employees ineligible to accrue leave are not eligible for holiday pay.
- C. Emergency employees, interim employees and temporary employees who are employed on a full-time basis will be eligible to take the holiday with pay when they have worked the major portion of their scheduled work period before the holiday.
- D. Employees on special leave without pay, educational leave without pay, maternity leave without pay, military leave without pay and Division of Claims Administration status will not take or be paid for that holiday as it occurs or at a later date. Employees on educational leave with pay will be paid for the holiday, but the leave should be coded as educational leave (08) rather than as holiday pay. Employees on Sick Leave Bank will be paid for the holiday as one of their regularly approved sick leave bank days.
- E. Employees granted special leave without pay effective the day after the holiday will be paid for the holiday if they worked the major portion of the preceding day. Employees who separate while on special leave without pay are entitled to holiday pay earned before going on special leave.

**Example:** The employee worked the major portion on the 8th and is eligible for the holiday on the 9th. He has been granted special leave without pay to be effective on the 10th. The employee then decides to separate with the effective date of the 12th.

Day/Date	S07	M08	T09H	W10	T11	F12	S13	TOTAL
Scheduled		7.5	7.5	7.5	7.5	7.5		37.5
Worked		7.5						7.5
Non-Duty			7.5	7.5	7.5	7.5		30.0
Code			H/wp	sw/o	sw/o	sep		

- F. Terminating employees will not get paid for the holiday unless terminal leave extends at least .1 of one hour into the next work day following the holiday. Terminating employees who elect to take a lump sum payment of accrued leave prior to the holiday are not eligible to receive holiday pay.
- G. Employees transferring to a state college or university the next working day after a holiday may be paid for that holiday even though they will not have any pay after the holiday. Employees transferring to a State Service agency from a state college or university the next working day after a holiday are not eligible for holiday pay, unless the holiday is paid by the college or university.

## ACCOUNTING FOR HOLIDAY TIME FOR EMPLOYEES ON IRREGULAR WORK SCHEDULES

Due to the variety of state services, certain agencies are not able to observe some of the holidays. Work schedules make it necessary for some employees to work on holidays. When possible, the employee must revert to a normal work week.

- A. An employee who is scheduled to work on a holiday will receive compensatory overtime on an hour-for-hour basis for time actually worked up to the number of hours scheduled, regardless of the number of days scheduled in the work week.

### Example 1:

Day/Date	S29	M30	T01	W02	T03	F04H	S05	TOTAL
Scheduled		00	9.5	9.5	9.0	9.5		37.5
Worked		off	9.5	9.5	9.0	9.5		37.5

This employee is due 9.5 hours of compensatory time for the holiday.

### Example 2:

Day/Date	S19	M20	T21	W22	T23	F24H	S25	TOTAL
Scheduled						16.0	21.5	37.5
Worked						16.0	21.5	37.5

This employee is due 16.0 hours of compensatory overtime for the holiday.

- B. If the time spent actually working on a holiday exceeds a non-exempt employee's regular schedule, the non-exempt employee may be due cash overtime at the end of the work week in addition to the compensatory time, up to scheduled hours on the holiday.

### Example 1:

Day/Date	S29	M30	T01	W02	T03	F04H	S05	TOTAL
Scheduled			9.5	9.5	9.0	9.5		37.5
Worked			10.5	10.5	10.5	10.5		42.0

This employee is due 2.5 hours of regular overtime and 2.0 hours of premium overtime at the end of the work week and 9.5 hours of compensatory time for the holiday.



**Example 2:**

Day/Date	S29	M30	T01	W02	T03	F24H	S25	TOTAL
Scheduled	10.0	10.0	10.0	7.5	0.0	0.0		37.5
Worked	14.0	14.0	14.0	7.5	0.0	10.0	6.5	66.0

This employee is due 2.5 hours of regular overtime and 26.0 hours of premium overtime at the end of the work week and 7.5 hours of compensatory time for the holiday.

- C. An employee who is scheduled to work on a holiday but did not work (office closed) will receive holiday time on an hour-for-hour basis for time scheduled. This employee should be returned to a regular schedule if at all possible.

Day/Date	S29	M30	T01	W02	T03	F04H	S05	TOTAL
Scheduled		00	9.5	9.5	9.0	9.5		37.5
Worked		off	9.5	9.5	9.0			28.0
Non-Duty Code						9.5 H/sp/wp		9.5

- D. If a holiday falls on an employee's regularly scheduled day off, the employee will receive compensatory overtime equal to his regularly scheduled work day. An employee who is regularly scheduled to work less than five (5) days per week or other unusual shift will be given 7.5 hours of compensatory time.

**Example 1:**

Day/Date	S01	M02	T03H	W04	T05	F06	S07	TOTAL
Scheduled	7.5	7.5	0.0	0.0	7.5	7.5	7.5	37.5
Worked	7.5	7.5	0.0	0.0	7.5	7.5	7.5	37.5

This employee is due 7.5 hours of compensatory time for the holiday.

**Example 2:**

Day/Date	S05	M06	T07	W08	T09	F10H	S11	TOTAL
Scheduled		0.0	12.5	12.5	12.5	0.0		37.5
Worked		0.0	12.5	12.5	12.5	0.0		37.5

This employee is due 7.5 hours of compensatory time for the holiday.

**Example 3:**

Date/Day	S05	M06H	T07	W08	T09	F10	S11	TOTAL
----------	-----	------	-----	-----	-----	-----	-----	-------

Scheduled	11.5	0.0	4.0	6.0	6.0	4.0	6.0	37.5
Worked	11.5	0.0	4.0	6.0	6.0	4.0	6.0	37.5

This employee is due 7.5 hours of compensatory time for the holiday.

- E. If an employee is scheduled to work on a holiday and has an excused absence for which compensatory or annual leave is approved, that day will be charged as holiday time. This would be considered as his approved holiday compensation; therefore, he should not receive any overtime or compensatory time for this holiday. The following example illustrates this situation:

Day/Date	S05	M06	T07	W08	T09	F10H	S11	TOTAL
Scheduled		0.0	9.5	9.5	9.0	9.5		37.5
Worked		0.0	9.5	9.5	9.0			28.0
Non-Duty Code						9.5H sp/wp		9.5

However, if the employee requests sick leave to be charged, sick leave may be granted and compensatory time allowed for the holiday. If the employee presents a doctor's statement, sick leave must be granted.

#### Example 1

Day/Date	S05	M06	T07	W08	T09	F10H	S11	TOTAL
Scheduled		0.0	9.5	9.5	9.0	9.5		37.5
Worked		0.0	9.5	9.5	9.0	0.0		28.0
Non-Duty Code						9.5S 9.5 comp/ot		9.5

#### Example 2

Day/Date	S01	M02	T03H	W04	T05	F06	S07	TOTAL
Scheduled		12.5	5.0	15.0	5.0	0.0		37.5
Worked		12.5		15.0	5.0	0.0		32.5
Non-Duty Code			5.0S 7.5 comp/ot					5.0

- F. If an employee is scheduled to work 7.5 hours or more on a holiday and only fulfills part of that scheduled day, the balance of the day is to be charged as holiday time and the employee will be given compensatory time for hours actually worked.

#### Example 1:

Day/Date	S01	M02	T03H	W04	T05	F06	S07	TOTAL
----------	-----	-----	------	-----	-----	-----	-----	-------

Scheduled	9.5	9.5	9.5	9.0	0.0	37.5
Worked	9.5	5.0	9.5	9.0	0.0	33.0
Non-Duty		4.5H sp/wp				4.5
Code		5.0 comp/ot				

**Example 2:**

Day/Date	S01	M02	T03H	W04	T05	F06	S07	TOTAL
Scheduled		7.5	7.5	7.5	7.5	7.5		37.5
Worked		7.5	5.0	7.5	7.5	7.5		35.0
Non-Duty			2.5H sp/wp					2.5
Code			5.0 comp/ot					

- G. Any unexcused absences may be charged as leave without pay and the employee should not receive any compensatory time for the holiday.

Day/Date	S01	M02	T03H	W04	T05	F06	S07	TOTAL
Scheduled		9.5	9.5	9.5	9.0	0.0		37.5
Worked		9.5		9.5	9.0	0.0		28.0
Non-Duty			9.5					9.5
Code			cu/wo					

- H. Employees on a 37.5 hour work week must be compensated at least 7.5 hours on the holiday and employees on a 40.0 hour work week must be compensated at least 8.0 hours on the holiday when the eligibility requirement is met.

**Example 1:**

Day/Date	S05	M06	T07	W08	T09	F10H	S11	TOTAL
Scheduled	11.5	0.0	4.0	6.0	6.0	4.0	6.0	37.5
Worked	11.5	0.0	4.0		6.0	4.0	6.0	31.5
Non-Duty				6.0				6.0
Code				A		7.5 H/comp/ot		

The employee is due 7.5 hours of compensatory time for the holiday.

**Example 2:**

Day/Date	S19	M20	T21	W22	T23H	F24H	S25	TOTAL
Scheduled	13.5	6.0	6.0	6.0	6.0	0.0		37.5
Worked	13.5	6.0	6.0	6.0	6.0	0.0		37.5
Non-Duty Code						15.0 comp/ot		

The employee is due 7.5 hours of compensatory time for the 23rd and 7.5 hours of compensatory time for the 24th, for a total of 15.0 hours of compensatory time.

**Example 3:**

Day/Date	S19	M20	T21	W22	T23H	F24H	S25	TOTAL
Scheduled	13.5	6.0	6.0	6.0	6.0	0.0		37.5
Worked	13.5	6.0	6.0	6.0		0.0		31.5
Non-Duty Code					6.0 Hsp/wp			6.0
					9.0 comp/ot			

The employee is due 1.5 hours of compensatory time for the 23rd and 7.5 hours of compensatory time for the 24th, for a total of 9.0 hours of compensatory time.

## ACCOUNTING FOR HOLIDAY TIME FOR EMPLOYEES WHO DO NOT MEET ELIGIBILITY REQUIREMENTS

The following policies and examples apply to employees on regular or irregular work schedules who are not in an active pay status for the major portion of their scheduled work day immediately preceding the holiday.

- A. Employees who work scheduled hours on the holiday will continue to receive compensatory overtime for the hours actually worked up to scheduled hours.

Day/Date	S01	M02	T03H	W04	T05	F06	S07	TOTAL
Scheduled		7.5	7.5	7.5	7.5	7.5		37.5
Worked			7.5	7.5	7.5	7.5		30.0
Non-Duty Code		7.5						7.5
		curr w/o						

The employee is due 7.5 hours of compensatory time for the holiday.

- B. Employees who are scheduled to work on the holiday but who only complete a portion of their scheduled hours will receive compensatory time up to their scheduled hours and the remainder of the day will be without pay.

<u>Day/Date</u>	<u>S01</u>	<u>M02</u>	<u>T03H</u>	<u>W04</u>	<u>T05</u>	<u>F06</u>	<u>S07</u>	<u>TOTAL</u>
Scheduled		7.5	7.5	7.5	7.5	7.5		37.5
Worked			4.0	7.5	7.5	7.5		26.5
Non-Duty		7.5	3.5					11.0
Code		curr	curr					
		w/o	w/o					

The employee is due 4.0 hours of compensatory time for the holiday and the remaining 3.5 hours will be without pay.

- C. Employees who are scheduled less than 7.5 hours on the holiday will receive compensatory time for the hours worked per schedule. No additional compensatory time is due to compensate the employee for 7.5 hours on the holiday when the employee does not meet the eligibility requirement.

<u>Day/Date</u>	<u>S01</u>	<u>M02</u>	<u>T03H</u>	<u>W04</u>	<u>T05</u>	<u>F06</u>	<u>S07</u>	<u>TOTAL</u>
Scheduled		7.5	5.0	10.0	7.5	7.5		37.5
Worked			5.0	10.0	7.5	7.5		30.0
Non-Duty		7.5						7.5
Code		curr	w/o					

The employee is due 5.0 hours of compensatory time for the 3rd.

- D. Employees who are not scheduled to work on the holiday are not eligible for any compensatory time when the eligibility requirement is not met.

<u>Day/Date</u>	<u>S01</u>	<u>M02</u>	<u>T03H</u>	<u>W04</u>	<u>T05</u>	<u>F06</u>	<u>S07</u>	<u>TOTAL</u>
Scheduled		7.5		7.5	7.5	7.5	7.5	37.5
Worked				7.5	7.5	7.5	7.5	30.0
Non-Duty		7.5						7.5
Code		curr	w/o					

The employee is not due any compensatory time on the holiday.

- E. Employees who are not scheduled on the holiday but who work overtime hours on the holiday are not eligible for any compensatory time on the holiday. All hours worked on the holiday will be compensated as either cash or compensatory overtime at the end of the work week for eligible employees.

<u>Day/Date</u>	<u>S01</u>	<u>M02</u>	<u>T03H</u>	<u>W04</u>	<u>T05</u>	<u>F06</u>	<u>S07</u>	<u>TOTAL</u>
Scheduled		7.5		7.5	7.5	7.5	7.5	37.5
Worked			7.5	7.5	7.5	7.5	7.5	37.5
Non-Duty		7.5						7.5
Code		curr	w/o					

This non-exempt employee is due 7.5 hours of regular overtime at the end of the work week. No compensatory time is due for the holiday.

Authority: T.C.A. 15-1-101  
Personnel Rule: 1120-6-.15

## **CHAPTER 8 CIVIL LEAVE**

### **LEAVE USE**

Civil leave may be used by any State employee who is subpoenaed or otherwise directed to serve as a juror in any court of the United States or the State of Tennessee. Any employee (including part-time) scheduled to work on the day he is called for jury duty is eligible for civil leave. If the employee is not scheduled to work, then he is not eligible for civil leave. Civil leave will be granted for any day or days an employee is required, by summons, to report for jury duty, provided such responsibility for jury duty exceeds three (3) hours during the day for which the excuse is sought. If the employee serves less than three (3) hours per day, the time served will be coded as civil leave and the employee must return to work or use compensatory or annual leave for the remaining work hours. Civil leave includes the time required to travel to and from jury duty.

### **NIGHT SHIFT**

If an employee summoned for jury duty is working a night shift or is working during the preceding hours before court is in session, the employee shall be granted civil leave from his employment for the shift immediately preceding the first day served. After the first day served, when the employee's responsibility for jury duty exceeds three (3) hours during a day, the employee shall be granted civil leave from his next scheduled work period if such schedule occurs within twenty-four (24) hours of jury duty. If the employee serves less than three (3) hours per day, the time served will be coded as civil leave (if the leave occurs during normally scheduled working hours) and the employee must report to work or use compensatory or annual leave for their next regularly scheduled shift.

### **PAYMENT FOR SERVING**

The employee may retain any compensation received for jury duty from the courts.

### **GOVERNMENT WITNESS**

An employee who serves as a government witness in an official job capacity will be considered on duty and not charged leave. When the employee serves less than three (3) hours per day, the employee must return to work or use compensatory or annual leave for the remaining work hours.

### **PRIVATE LITIGATION WITNESS**

An employee must take compensatory, annual or leave without pay if subpoenaed in private litigation to testify not in an official capacity.

## **EMPLOYEE INVOLVED IN CRIMINAL OR CIVIL TRIAL**

An employee who is personally involved in litigation and is absent from duty will be charged with compensatory, annual or leave without pay.

Authority: T.C.A. 22-4-108  
Personnel Rule: 1120-6-.16

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## **CHAPTER 9    EXTENDED LEAVE**

Extended leave addresses situations in which employees are in an extended leave without pay status. The policy pertains both to employees who use leave prior to going on leave without pay status and those who choose to retain leave balances.

### **ELIGIBLE EMPLOYEES**

Employees must make a written request to their appointing authority for approval of special leave, maternity leave, adoptive leave, educational leave, and personal educational leave. Employees requesting military leave must provide a copy of their orders to report to active duty. Employees may also be on extended leave when using leave through the sick leave bank or Division of Claims Administration leave.

The granting of extended leave gives the employee the right to return to his position in accordance with provisions of the written approval granted by the appointing authority, provided the position still exists.

### **LEAVE USE**

An employee must use his compensatory leave balance before being approved for leave without pay except in cases of military or Division of Claims Administration leave. An employee may be approved to use all or part of his accumulated annual and sick leave (where appropriate) before beginning the period of leave without pay. An employee may also be approved to retain his accumulated annual and sick leave balances.

An employee who has been granted extended leave without pay will not be permitted to work or use paid leave intermittently during the period of approved leave unless he is using leave for FMLA reasons of his own serious health condition or the health condition of a qualifying family member. For example, an employee who is granted special leave without pay may not return to work for a day or use a day of paid leave, then return to special leave. This practice, in order to pay the State's portion of the employee's insurance premium, is prohibited. Please notify employees of the way in which a period of extended leave without pay may impact their insurance coverage. Any exceptions to the above policy must be requested in advance to the Department of Human Resources.

### **ACCOUNTING FOR EXTENDED LEAVE**

Instances for which extended leave may be approved include special leave, maternity leave, adoptive leave, educational leave, personal educational leave, Division of Claims Administration leave, Sick Leave Bank leave and military leave. In determining the beginning date for extended leave, the effective date will be the date the employee is without pay for the major portion of the day. Extended leave should be coded as special without pay on the attendance and leave record, which will deactivate the employee's payroll record. A copy of the appointing authority's approval or, if applicable, a copy of the military orders must be submitted to the Department of Human Resources, Division of Technical Services. Include an attendance and leave record for the affected extended leave period.

## **RETURNING FROM EXTENDED LEAVE**

Employees failing to return two (2) days after the end of an approved special leave period shall be considered to have resigned in accordance with civil service rules and regulations.

## **EFFECT ON PROBATIONARY PERIOD, SERVICE AND SALARY INCREASES**

An employee on extended leave without pay for a major portion of a calendar month does not accumulate sick or annual leave for that month. The expiration date of the probationary period and the anniversary date for service, longevity pay, and salary policy adjustments will be changed accordingly.

## **ACCURATE REPORTING OF EMPLOYEE STATUS**

An employee in a non-pay status for a long period of time should have his payroll record deactivated using the special leave without pay code on the attendance and leave form to prevent overpayment to the employee in future pay periods. The Department of Human Resources should be notified to reactivate the employee's payroll record once he returns to an active pay status. An appropriate personnel transaction should be processed to reflect the reason for the extended period of non-pay status.

Authority: T.C.A. 4-21-408; 8-30-215; 8-33-101; 8-50-901  
Personnel Rules: 1120-6-.14; 1120-6-.17

## **CHAPTER 10 EDUCATIONAL LEAVE**

### **ELIGIBILITY FOR EDUCATIONAL LEAVE WITH PAY**

Any full-time regular employee may be eligible for educational leave if the training is directly applicable to the needs of the agency and/or to the position the employee holds or for which he is being trained.

Educational leave applies only to leave granted and supported by a State department or agency under the Specialized Out Service Training Policy administered by the Department of Human Resources.

### **PURPOSES**

- A. To provide opportunities for education and training which will increase the proficiency of State employees in carrying out their present duties and responsibilities as well as improving the quality of service to people within the State.
- B. To assist State employees in meeting required qualifications in occupational and professional fields where critical shortages exist.
- C. To provide opportunities for continuing education and advanced study on a full time basis and training for the purpose of keeping up-to-date with rapid technological changes.

### **COMPENSATION**

An employee may receive a maximum of 75% of his salary during the period of full-time training. When the State requires an employee to acquire additional formal education to accomplish his duties, the employee may be compensated at full salary with prior approval of the Commissioner and the Commissioner of the Department of Finance and Administration. If an employee should receive salary assistance through fellowships, grants, or other outside sources, the salary during the training period shall not exceed the employee's regular salary. A notarized statement of salary funding and sources must be submitted.

### **CREDIT GIVEN TOWARD SALARY INCREASES**

Time served by State employees while on educational leave will be counted on a month-for-month basis in determining the date which an employee will be considered eligible for earned salary increases.

### **EFFECT OF EDUCATIONAL LEAVE ON SERVICE TIME AND LONGEVITY**

During the period of absence on educational leave, the employee shall retain any accumulated annual and sick leave, and continue to earn time toward seniority and time for total years service. Employees on educational leave are considered to be on active pay status and eligible for longevity when normally due.

## **ANNUAL AND SICK LEAVE**

Employees on educational leave do not use nor do they accrue annual or sick leave.

## **EDUCATIONAL LEAVE WITHOUT PAY**

An employee may request leave without pay to continue his education on a full time basis. This leave must be approved in advance by the appointing authority. Educational leave without pay will advance the employee's probation date (if applicable) as well as service and longevity anniversary dates.

Authority: T.C.A. 8-30-202  
Personnel Rule: 1120-6-.17

## CHAPTER 11 MILITARY LEAVE

### MILITARY LEAVE WITH PAY

A leave of absence with pay, not to exceed fifteen (15) regularly scheduled work days per calendar year, will be granted to all employees who are members of the reserve components of the Armed Forces of the United States, including members of the Tennessee National Guard, for all periods during which they are engaged in the performance of duties or training activities in the service of the State or the Federal Government while under orders. Military leave with pay will be granted for regularly scheduled monthly training for reservists or national guardsmen. Holidays and scheduled off duty days do not count toward the fifteen (15) workdays allowed.

A. Eligible Employees

Military leave with pay is provided for members of the reserve components and the Tennessee National Guard who are regular State employees and has no effect on other leave provided by law, regulation, policy or practice.

B. Retention And Continuation of Benefits

During the period of approved military leave with pay the employee incurs no loss of service time or pay and continues to earn regular annual leave and sick leave. There shall be no loss of rights or benefits to which the employee is otherwise entitled. Employees on terminal leave are entitled to use their fifteen (15) days of military leave.

C. Employee's Responsibility

Employees shall give a copy of their military orders to their department personnel officer. Employees should cooperate with their supervisor by giving as much advance notice as possible when requesting military leave.

D. Appointing Authority's Responsibility

It is the appointing authority's responsibility to determine that the employee has met all requirements pertaining to military leave with pay. All managers and supervisors shall cooperate with State employees requesting military leave by making adjustments where possible. If any questions arise, the agency should contact the Department of Human Resources, Employee Relations Division.

E. Call To Active State Duty With The Tennessee National Guard

The Governor has the power to order into active service all or any part of the Tennessee National Guard. Duty performed under the Governor's call to active duty does not count against any other leave and should be coded as administrative leave on the employee's attendance and leave record. Compensation received for this special duty shall be in addition to the regular salary of any State employee who is a member of the National Guard.

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### MILITARY LEAVE WITHOUT PAY

Military leave without pay shall be granted to eligible employees for periods of active duty or training activity with the armed forces of the United States, its Reserve Components, or the Tennessee National Guard. Military leave without pay shall be granted to employees entering the regular components of the Armed Forces of the United States.

A. Eligible Employees

Military leave without pay shall be granted to any employee of the State who is a member of the Armed Forces of the United States.

B. Maximum Amount Of Leave Without Pay

The period of leave without pay shall not exceed the period of military duty plus ninety (90) calendar days. Employees who voluntarily re-enlist shall be eligible for military leave without pay or reemployment benefits. If the service or enlistment is extended as a result of war or national emergency, leave without pay shall be extended to the date of separation plus ninety (90) days. Employees hospitalized for a service-connected disability or injury shall be granted leave without pay for the period of hospitalization plus ninety (90) calendar days. If an employee is on military training for three (3) months or longer, he shall be allowed thirty-one (31) calendar days in which to report to work.

For military service or training of less than ninety (90) days the employee must report to work no later than the first work day after termination of his service.

C. Employee's Responsibility

The employee shall give the appointing authority a copy of orders to report for active duty. The employee should cooperate with the supervisor by giving as much advance notice as possible of his intent to return to work.

D. Appointing Authority's Responsibility

It is the appointing authority's responsibility to determine the employee's eligibility for military leave without pay and to require a copy of the military orders. The employee shall be advised of his rights, responsibilities and benefits under this provision. A copy of the orders attached to the appropriate forms requesting military leave shall be submitted to the Department of Human Resources. Final separation forms shall be submitted to the Department of Human Resources if the employee exceeds the time limitation for reemployment. All managers and supervisors should cooperate with State employees requesting military leave by making adjustments when possible.

E. Retention And Continuation Of Benefits

During the period of leave without pay for military service, the employee shall retain all accumulated annual and sick leave, retirement status, and continue to earn time toward seniority and retirement. Time served on military leave without pay counts as State service time under the longevity program. Continuation under the State's insurance program, if elected, shall be granted subject to appropriate State insurance program provisions.

**F. Reinstatement After Completion Of Military Service**

Any employee on leave without pay who separates or is discharged from military service under other than dishonorable conditions, and who reports for reemployment within the established time limits may be reinstated to the same position, if feasible, or to one of similar status, seniority and pay. If for any reason it is not feasible for the employee to be restored to such department or agency, he may be reinstated to a position of similar status, seniority, and pay with any State agency. The employee's salary upon reinstatement shall be based upon his last salary plus any general salary adjustment. A salary increase based solely on merit is not considered a general salary adjustment. An employee who resigns without knowledge of military leave without pay and reemployment benefits, and who is otherwise eligible for reemployment benefits, shall be reemployed from military service in the same manner as if he had applied for and been granted military leave without pay. If during military service an employee is disabled to the extent that the duties of the original position cannot be performed, the employee shall be reemployed in a position with duties commensurate with the disability, if such a position is available.

**MILITARY FUNERAL**

Excused absence up to four (4) hours in any one day may be granted to an employee who is a veteran to participate in a military funeral service as a pallbearer, member of a firing squad or Honor Guard. For this purpose only, a veteran is defined as one who has been separated from military service under honorable conditions and who served at least six (6) months during any one of the following periods:

World War 1	04-07-17	to	11-11-18
World War 11	12-07-41	to	12-31-46
Korean Campaign	06-27-50	to	01-31-55
Vietnam Campaign	08-05-64	to	05-07-75

Operation Desert Shield/Desert Storm - beginning date  
8-02-90 to unestablished.

Lebanon Expedition, Grenada Expedition, and the Panama  
Expedition, if awarded the "Armed Forces Expeditionary Medal".

**OPERATION DESERT SHIELD / DESERT STORM**

Employees called to active military duty as part of Operation Desert Shield/Desert Storm were entitled to leave with partial pay for a period not to exceed one (1) year. These employees were considered active State employees while on military duty for the purpose of accruing annual and sick leave and receiving service credit for longevity pay and retirement.

**OPERATION JOINT ENDEAVOR**

Employees called to active military duty as part of Operation Joint Endeavor are entitled to leave with partial pay for a period not to exceed 270 calendar days. These employees are considered active State employees while on military duty for the purpose of accruing annual and sick leave and receiving service credit for longevity pay and retirement.

Authority: T.C.A. 8-33-101 through 8-33-109  
Personnel Rule: 1120-6-.18



## CHAPTER 12 SPECIAL LEAVE

### SPECIAL LEAVE WITHOUT PAY

Special leave is leave without pay that is greater than the major portion of one month. Special leave without pay may be granted to an employee at the discretion and upon recommendation of the appointing authority. Special leave must be requested in writing and be approved in advance by the appointing authority, where practical. If a request cannot be submitted and approved, the employee must receive verbal approval. Upon returning to work the employee must submit a written request explaining the nature of the absence and provide, if requested, a physician's statement. This approval must be submitted to the Commissioner of Human Resources as a matter of record. Leave without pay, which constitutes a period of less than the major fraction of a month, may be delegated by the appointing authority to the immediate supervisor and requires no special notification to the Commissioner of Human Resources. However, if the special leave is intermittent and constitutes the major portion of a month, a memorandum of explanation must be submitted to the Commissioner of Human Resources for approval.

General examples for which special leave without pay may be granted are:

- A. Extended Illness - An employee ordinarily exhausts all accumulated annual, sick and compensatory leave before going on special leave in this situation. If the appointing authority agrees, an employee may go on special leave and retain some or all accumulated sick and annual leave.
- B. Special Work Assignment - In cases of emergency or when the State and/or other governmental agency will profit by experience gained or the work performed, a State employee may be granted special leave without pay for special work assignments.
- C. Vacation - An employee may be granted special leave without pay for vacation purposes if approved by the appointing authority.
- D. Seasonal - Seasonal leave is an enforced leave of absence without pay during a recess period from a permanent position which does not require the services of an employee for the entire year.
- E. Adoptive Parents - Special leave without pay shall be granted for a period up to thirty (30) consecutive working days to adoptive parents upon written request to the appointing authority, accompanied by a statement from the adoption agency indicating the required bonding period.

Employees may use sick leave for all or a portion of that thirty (30) days, not to exceed the employees' leave balance if the child is one year old or younger, provided, however, in the event both parents are State employees, the aggregate of sick leave used shall be limited to thirty (30) days. Compensatory and annual leave may also be used.

Additional special leave may be granted at the discretion of the appointing authority up to the remaining bonding period required by the adoption agency but not to exceed one (1) year. Compensatory or annual leave but not sick leave may also be used; provided, however, that in the event the adoption process is not completed, the approval of leave shall be rescinded. The provisions of this rule shall not apply in cases of stepchild or adult adoption.

- F. Leave of Absence for Officer of Employee Associations - The chief elected officer of any employee association that has payroll deductions for association dues shall be allowed up to two (2) years leave of absence without pay to perform the duties of such office. This leave of absence shall not apply to a chief elected officer who is under the executive grade pay plan or to State physicians or dentists.

- G. Leave For Athletic Competition - See Chapter 4, Annual Leave - Leave Of Absence For Participation In Certain Athletic Competitions.

- H. Family and Medical Leave - See Chapter 6.

Authority: T.C.A. 8-30-215; 8-50-109; 8-50-806  
Personnel Rule: 1120-6-14

## **CHAPTER 13 MATERNITY/PATERNITY LEAVE**

### **MATERNITY LEAVE ELIGIBILITY**

Any female employee who has been employed in State service for at least 12 consecutive months as a full-time employee may be absent from employment for a period not to exceed four (4) months for pregnancy, childbirth, and nursing the infant. The four month period shall include leave required before and after the birth of a child.

Any female employee who has less than one (1) year of service may be granted maternity leave for a period not to exceed thirty (30) work days following the birth of a child.

### **PATERNITY LEAVE ELIGIBILITY**

Any male employee may be granted up to thirty (30) days of sick leave as paternity leave following the birth of a child.

### **RESTORATION TO FORMER POSITION**

See Chapter 6, Family and Medical Leave Act, for requirements to restore an employee to his or her former position when taking up to twelve (12) weeks of Family and Medical Leave due to birth of a child.

A female employee who gives at least three (3) months advance notice of her anticipated date of departure for maternity leave, length of maternity leave, and intention to return to full-time employment after maternity leave shall be restored to her previous or a similar position with the same status, pay, length of service credit and seniority, whenever applicable, as of the date of leave. Benefits and rights provided shall not be forfeited if the employee is prevented from giving three (3) months advance notice due to a medical emergency which necessitates the maternity leave beginning earlier than anticipated.

In situations where a female employee takes more than twelve weeks maternity leave, the following applies: if her position is so unique that, with reasonable effort, the position cannot be filled temporarily, as determined by the Commissioner, or if the employee has utilized the period of maternity leave to actively pursue other employment opportunities or has worked part-time or full-time for another employer, reinstatement is not required. In such case, the employee shall be notified of the decision not to reinstate.

### **PHYSICIAN'S STATEMENT**

A statement from the attending physician indicating the expected date of delivery must accompany the request for maternity/paternity absence. Additional information from the attending physician may be required if there are complications and the period of

absence must begin sooner than agreed, extend further than agreed, or require the use of sick leave beyond the period beginning with the period of hospitalization and extending for thirty (30) work days after delivery.

## **EMPLOYEE'S RESPONSIBILITY TO REQUEST MATERNITY/PATERNITY ABSENCE**

The employee is responsible for submitting a written request for maternity/paternity absence which should include the doctor's statement. It should be submitted to the appointing authority through the employee's immediate supervisor and the departmental personnel officer as soon as possible to allow for adjustments in the work schedule.

## **TYPES OF LEAVE PERMISSIBLE FOR MATERNITY/PATERNITY LEAVE**

A. Annual Leave

Annual leave may be used during a maternity/paternity absence.

B. Compensatory Time

Compensatory time may be used during a maternity/paternity absence.

C. Sick Leave

Sick leave may be used during a maternity/paternity absence until thirty (30) work days after delivery, based upon documentation of the pregnancy. Use of sick leave prior to and thirty (30) work days after delivery is subject to ordinary rules regarding the use of sick leave, i.e. the employee must be unable to work or must be using sick leave to care for a sick or disabled family member. All sick leave used during a maternity/paternity absence is coded "08-Maternity" in the attendance and leave reporting system. If both parents are state employees, the aggregate of sick leave used for maternity and paternity leave is limited to thirty (30) days.

D. Maternity Leave Without Pay

Special leave without pay may be used during a maternity/paternity absence.

E. Family and Medical Leave - See Chapter 6.

Authority: T.C.A. 4-21-408; 8-50-802; 8-30-215; 8-50-806

Personnel Rule: 1120-6-.20

## **CHAPTER 14   ADOPTIVE LEAVE**

Special leave without pay shall be granted for a period up to thirty (30) consecutive working days to adoptive parents upon written request to the appointing authority, accompanied by a statement from the adoption agency indicating the required bonding period.

Employees may use sick leave for all or a portion of that thirty (30) days, not to exceed the employees' leave balance if the child is one year old or younger, provided, however, in the event both parents are State employees, the aggregate of sick leave used shall be limited to thirty (30) days. Compensatory and annual leave may also be used. Additional special leave may be granted at the discretion of the appointing authority up to the remaining bonding period required by the adoption agency but not to exceed one (1) year. Compensatory or annual leave but not sick leave may also be used; provided, however, that in the event the adoption process is not completed, the approval of leave shall be rescinded. The provisions of this rule shall not apply in cases of stepchild or adult adoption.

Authority: T.C.A. 8-50-806  
Personnel Rule: 1120-6-.21

## **CHAPTER 15 DIVISION OF CLAIMS ADMINISTRATION LEAVE**

### **(Formerly Board of Claims Leave)**

#### **ELIGIBLE EMPLOYEE**

Employees injured in the line of duty have the option of being placed immediately on leave without pay and upon approval drawing lost time compensation through the Division of Claims Administration or using sick and/or annual leave and then drawing lost time compensation.

#### **ELIGIBILITY FOR LOST TIME COMPENSATION**

To be eligible for lost time compensation from the Division of Claims Administration, an employee must be in a without pay status due to injury or job related illness for more than seven (7) calendar days. If the employee is unable to work after more than fourteen (14) calendar days, lost time compensation from the Division of Claims Administration will be paid effective from the first day the employee is in a without pay status following the injury.

#### **RETURN FROM LEAVE**

When the employee is no longer compensated by the Division of Claims Administration and returns to normal work duties, the agency must return the employee to active status and submit documentation to adjust his service and longevity dates along with a doctor's statement stating that he is able to return to work.

#### **EFFECT ON ANNIVERSARY DATES**

Employees should be given credit for time compensated by the Division of Claims Administration as if it was time served in an active pay status. Even though time served should not advance the employee's longevity, salary, or service anniversary date, these dates are automatically advanced each month that the employee is not in active pay status the major portion of the month. When the employee returns to active status, documentation must be submitted to the Transactions Section of the Department of Human Resources to correct these dates.

#### **DISABLING ASSAULT INJURIES IN THE LINE OF DUTY**

Retention on regular payroll - conditions are as follows:

- A. Whenever an employee of the State of Tennessee is injured in the line of duty as a result of an assault and the injury results in his inability to perform regular duties, whether such disability is temporary or permanent, the appointing authority, with prior approval of the Commissioners of Finance and Administration and Human Resources, shall retain the injured employee on the regular payroll for a period not to exceed twenty-eight (28) calendar days without requiring the employee to use any sick leave benefits. This leave should be coded as AI on the employee's attendance and leave record.

- B. The length of time an injured employee will be permitted to remain on the regular payroll shall be based upon a written statement from the attending physician that the employee is unable to perform regular duties. In no event shall this period exceed twenty-eight (28) calendar days from the date of the injury.
- C. In circumstances where an injured employee makes a claim for compensation for the injury to the Division of Claims Administration, the appointing authority is authorized to compensate the employee for the difference between the employee's weekly salary at the time of the injury and the weekly compensation for such injury as determined by the Division for the period of time between the date of the injury and the effective date of the action of the Division. In no case will this compensation exceed ninety (90) calendar days. This provision shall not apply to employees who have failed to file a claim with the Division within ten (10) calendar days after the date of the injury causing the temporary or permanent disability. The agency continues to pay the employee on the regular payroll and the Division of Claims Administration will reimburse the agency for the period between twenty-eight (28) and ninety (90) days. Assault pay may be used intermittently for up to the ninety (90) calendar day limit.
- D. In the event that the injured employee receives any monetary recovery from or settlement with a third party where the State receives any part of the recovery in compensation for payments made, the State shall pay a pro rata share. This share will be based on the percentage of the recovery received, and of any attorneys fees paid or agreed to by the injured employee that were made to secure such settlement or recovery.
- E. Nothing in this section shall be construed to prevent an injured State employee from requesting permission to use any sick leave benefits.
- F. Whenever a commissioned member of the Tennessee Department of Safety, a driver's license examiner, correctional officer or youth service officer is injured in the line of duty and such injury disables him from performing his regular duties, whether such disability is temporary or permanent, it shall be lawful for the appointing authority with the approval of the Governor and the Attorney General of the State, to retain such injured disabled employee upon the regular payroll until his claim for compensation for such disability is determined by the Division of Claims Administration. This leave should be coded as ILD on the employee's attendance and leave record.

Authority: T.C.A. 4-7-109; 4-7-117; 8-50-111  
Personnel Rule: 1120-6-.23

## **CHAPTER 16    TERMINAL LEAVE**

The annual leave balance of a separating employee is called terminal leave.

### **ELIGIBLE EMPLOYEES**

When an employee separates from State service, he is eligible to receive pay for the unused portion of his annual leave except in the case of termination for gross misconduct. Any employee dismissed from State service for gross misconduct or who resigns from State service to avoid termination for gross misconduct is not eligible to receive compensation for any accrued annual leave as terminal leave or in a lump sum payment. In this situation, however, the employee must be paid for all accumulated compensatory leave.

### **EMPLOYEES SUBJECT TO STATE RETIREMENT**

All employees who are members of the State Retirement System and who are entitled to terminal leave must be compensated for their terminal leave prior to the effective date of their retirement.

### **MANDATORY LUMP SUM PAYMENT OF DEATH BENEFITS**

The payment of annual, sick and compensatory leave balances for deceased employees will be made in lump sums. Deceased employees should be separated from the payroll and personnel systems. They should not be placed on terminal leave, allowing leave balances to be "run out". Agencies should submit a supplemental for lump sum payments through the Department of Human Resources.

Deceased employees will receive credit and their beneficiaries or estates will be paid for holidays and longevity as if the deceased employees' annual and compensatory leave had been allowed to "run out" as terminal leave. Retirement credit will be granted for the sick leave balance accrued prior to death if the surviving beneficiary is due a benefit. Insurance coverage for the surviving eligible dependents of an employee who dies while under a State Health Insurance Plan will continue in effect for six months at no cost to the dependents or to departments. At the end of the six month period the dependents will automatically receive notification of eligibility to be insured through COBRA. Deceased employees will not accrue additional leave after the time of death.

Employee wages earned through the time of death should be processed on payroll as regular wages paid to the employee. T.C.A. 30-2-103 authorizes payment of up to \$10,000 in wages to a surviving spouse of a decedent, but if none, then to the surviving children of the decedent as tenants in common. The \$10,000 payment should be paid if funds are available from the wages earned through the time of death. This payment cannot be made from accumulated leave balances. Calculations should be made to determine if the payment can be made. A notarized request for payment must be made prior to the processing of the payroll for the pay period in question.

### **BENEFICIARY FOR LEAVE BALANCES**



An employee may designate a beneficiary to receive payment for sick, annual and compensatory leave balances upon his death. The beneficiary will be the same person designated as the beneficiary for receipt of retirement benefits unless the employee designates a different person.

An employee wishing to designate a beneficiary to receive the leave balances should prepare a simple statement indicating who should receive payment upon his death. The statement should be signed and notarized and become part of the employee's personnel file.

If there is no designated beneficiary, the payment of accrued leave will be made to the employee's estate.

## **TERMINATION OF BENEFITS**

During the period of terminal leave, an employee shall:

- A. Cease to be in a leave accruing status on the date terminal leave begins.
- B. Cease to be eligible for salary increases or salary adjustments. The salary rate in effect on the last day worked shall be used in determining terminal payment.

## **BEGINNING OF TERMINAL LEAVE**

Terminal leave begins the next workday following the last full workday. If the employee has a compensatory leave balance this balance must be paid first. Terminal leave will begin once the compensatory leave is exhausted. Employees on an irregular work schedule should revert to a regular work schedule.

## **SATURDAYS, SUNDAYS AND OFFICIAL HOLIDAYS**

In establishing an employee's terminal leave period, credit must be allowed during the terminal leave period for Saturdays, Sundays and holidays in the same manner as though regular annual leave was being considered.

## **DETERMINING THE END OF TERMINAL LEAVE PERIOD**

When an employee is separated, the last day of terminal leave shall be the official date of separation.

## **PAYING FOR A HOLIDAY WHILE ON TERMINAL LEAVE PERIOD**

In order for an employee to receive pay for a holiday while on terminal leave, there must be at least a balance of .1 terminal leave to be charged against the first workday

following the holiday. If a terminating employee is eligible for holiday pay while on terminal leave, the holiday should be coded "H" as usual.

**Example:**

Day/Date	S19	M20	T21H	W22	T23	F24	S25	TOTAL
Scheduled		7.5	7.5	7.5	7.5	7.5		37.5
Worked								
Non-Duty		7.5	7.5	7.5	7.5	7.5		37.5
Code		T	H	T/sep	sep	sep		

**PAYING FOR EXCESS TERMINAL LEAVE**

On July 1, 1986, employees began accumulating leave in excess of the maximum allowable accrual for their service group code for up to one year before the leave transferred to sick leave. The transfer date directly follows completion of the employee's hire month. Compensatory leave is considered work time and must be exhausted prior to the transfer date. If the employee separates (i.e., begins a terminal leave period) prior to this transfer the employee must be paid for the total amount of leave in the form of terminal leave. An example for an employee with a regular schedule follows:

**Example:** An employee who was hired in September, 1971 would have all leave in excess of the maximum annual leave balance transferred to sick leave balance at the end of September, 1992. The employee will begin to accrue over the maximum annual leave balance in October, 1992 (having not used any annual leave). If this employee takes no annual leave and terminates six months later (the following March, 1993) and is in group 5, the employee would accumulate twelve additional days (six months x two days per month). This would have to be paid as terminal leave in addition to the 42 days maximum accumulation for service group code 5. This would amount to 54 days of terminal leave or 405 hours.

**METHODS FOR PAYING TERMINAL LEAVE**

When the payroll payout method is used, an employee remains on the payroll during his terminal leave and receives a paycheck on each payday until the terminal leave is exhausted. Extra benefits received under this method are payments for holidays and longevity when these dates fall within the terminal leave period. Insurance coverage is extended and retirement credit is calculated during the terminal leave period.

The lump sum method pays for all accrued compensatory time and annual leave in one payment upon the termination of employment. The last day worked and the termination effective date are the same date. Holiday time and longevity that could have been paid in the payroll payout method are not calculated in a lump sum payment.

**An agency may pay terminal leave in either the payroll payout or lump sum method. The form of terminal leave payment is at the discretion of the appointing authority based upon the good of the service. The use of a combination of both methods is not allowed.**

**LONGEVITY PAYMENT ON TERMINAL LEAVE**

Employees who are receiving compensation (on the payroll) on their longevity anniversary date, even if they are on terminal leave, are eligible for longevity payments.

Authority: T.C.A. 8-50-807  
Personnel Rule: 1120-6-.24

Rev. 11/97

## **CHAPTER 17 TEMPORARY EMPLOYMENT OF RETIRED STATE EMPLOYEES**

Retired employees may return to temporary State employment under certain conditions as outlined in the temporary employment form obtained from the Retirement Division, Treasury Department. The retired employee may accept employment with a covered employer for up to 100 days during a 12-month period.

The appointment types will be interim full-time for career service positions and regular full-time for executive service positions. Appointments will be at a monthly rate of pay. Any exceptions must be approved by the Commissioner. When these employees do not actually work a full schedule for a pay period, they should be charged as "time without pay". Employees must be separated after 100 work days in positive pay status or after 12 consecutive months, whichever comes first.

Retired employees in interim full-time or executive service regular full-time status will be eligible to accrue and use annual and sick leave. Prior service credit will be established for these employees so they can accrue at the correct rate.

Annual and sick leave used during their period of employment or as terminal leave will count toward the 100 day limit for retirement purposes. At the expiration of the appointment any unused annual leave will be paid in a lump sum. If the employee chooses to be paid for unused annual leave in a lump sum, this amount will not count toward the 100 day limit.

Any unused sick leave accumulated during the period of temporary employment may be used during a subsequent period of employment. Sick leave balances accumulated prior to an employee's retirement is credited toward service for retirement, and as such can not be reinstated when an employee returns to work.

Time worked in these temporary periods of employment does not count toward service credit, unless a retiree leaves retirement status and returns to work on a regular full time appointment. In these cases any creditable months worked in temporary State employment will be credited to the employee and the service anniversary dates will be adjusted.

Retired employees are not eligible for longevity payments with the exception of the retired employees who are eligible for longevity payments under the authority of T.C.A. 8-23-206(B).

Authority: T.C.A. 8-36-805

## **CHAPTER 18 OVERTIME**

Overtime is approved time worked in excess of the employee's normal workweek schedule for which extra compensation is authorized. Depending on the number of hours actually worked in the work week and the type of work the employee performs, overtime compensation may be in the form of cash at the employee's regular rate of pay, cash at the employee's premium rate of pay (one and one-half times the regular rate) or in equivalent time off (compensatory time).

### **OVERTIME AUTHORIZATION**

When it becomes necessary for State agency employees to work overtime in order to accomplish the agency's mission, the appointing authority for that agency or officially designated supervisors and managers may authorize overtime work in addition to the employee's regular work schedule. The employee is expected to work overtime when the job requires this extra work and the supervisor gives a reasonable job assignment. If the employee refuses to work overtime in this situation, he may be subject to disciplinary action.

### **NON-EXEMPT EMPLOYEE OVERTIME ELIGIBILITY**

Non-exempt employees (employees covered by the overtime provisions of the Fair Labor Standards Act) must be paid in cash for all overtime, with the following exceptions:

- A. Compensatory time may be awarded in lieu of cash, at the request of the appointing authority and approval of the Commissioner of Human Resources, if sufficient funds are not available to pay cash. In this situation, an agreement or understanding with the affected employees to accept compensatory time in lieu of cash must be reached prior to the performance of work. This agreement or understanding must be communicated in writing and must be documented by the agency.
- B. Non-exempt employees may request compensatory time in lieu of cash payment. A written request from the employee approved by the employee's supervisor is necessary. Employees requesting this exception cannot change back and forth from cash to compensatory time more frequently than once per week. An agency's appointing authority may have internal policies that further restrict the number of times employees may change back and forth between cash and compensatory time.

Non-exempt employees are paid at their regular hourly rate for hours actually worked in excess of their regular 37.5 hour weekly schedule up to 40.0 hours in a work week. Employees are paid at the premium rate (one and one-half times their regular rate) for hours actually worked in excess of 40.0 in a work week. Non-duty time spent on paid leave will be counted as compensable hours earned but will not be counted as hours actually worked. An employee must actually work 40.0 hours in the work week before premium overtime is due. Overtime cannot be paid until the work week is completed. This applies even in work weeks split between two different pay periods.

When compensatory time is granted in lieu of cash, non-exempt employees receive hour-for-hour time off (regular compensatory time) for overtime hours worked between 37.5 and 40.0 in a work week and one and one-half times the number of hours worked (premium compensatory time) for all hours worked in excess of 40.0 in a work week.

Employees in this category are identified by FLSA code "1" or "cash" on their personnel record.

#### **EXEMPT EMPLOYEE (NON-EXECUTIVE LEVEL) OVERTIME ELIGIBILITY**

Exempt employees are those whose predominant duties are "executive", "administrative", "professional" or "outside sales", as defined by the Fair Labor Standards Act. Employees performing these duties are "exempt" from Fair Labor Standards Act overtime provisions requiring premium cash compensation for overtime hours worked over 40.0 in a work week in most situations.

Exempt employees not categorized as executive level by the Commissioner may be granted hour-for-hour compensatory time for all hours in excess of their regular 37.5 hour weekly schedule in a work week.

Employees in this category are identified by FLSA code "2" or "comp" on their personnel record.

Any request to pay cash overtime to non-executive level exempt personnel must be approved by the Departments of Finance and Administration and Human Resources.

#### **EXEMPT EMPLOYEE (EXECUTIVE LEVEL) OVERTIME INELIGIBILITY**

Exempt employees categorized as "executive level" by the Commissioner are ineligible to receive cash or compensatory overtime. However, when an executive level employee is scheduled to work on a holiday the holiday may be rescheduled.

Employees in this category are identified by FLSA code "3" or "none" on their personnel record.

#### **LOSS OF EXEMPTION WHEN 20% NON-EXEMPT WORK IS PERFORMED**

When exempt employees spend more than 20% of their time performing non-exempt work in a given work week, their exemption from FLSA overtime provisions is lost for that work week. When this situation occurs, affected employees must be compensated in the same manner as non-exempt employees for overtime hours worked in the work week. When compensation in cash is required in these situations, documentation should be provided to the Department of Human Resources, Transactions Section, detailing the non-exempt duties performed by the employee and the total number of hours of non-exempt work performed in the work week, along with a supplemental payroll form or processing the cash payment.

#### **INCLUDING LONGEVITY PAY IN CASH OVERTIME CALCULATIONS**

All non-exempt employees must be credited with the hourly equivalent amount of the most recent longevity payment received during their current period of employment. This is part of their total compensation and will be included in all cash overtime payments.

This longevity amount will be added to the regular and premium overtime rate automatically if the overtime is processed normally on the attendance and leave record. The computer system will extract data on the last longevity payment paid to the employee and add that hourly equivalent rate to the regular hourly rate. An exempt employee receiving compensatory time is not covered under FLSA. There is no need to compute additional costs since the employee is receiving time-for-time, even if it is paid to the employee when he leaves State service.

If any overtime is processed manually by a supplemental, this computation must be taken into account or the employee will be underpaid.

## **OVERTIME FOR TRAVELING OUTSIDE THE REGULARLY SCHEDULED WORK DAY**

### **Traveling Outside The Normal Schedule On A Scheduled Work Day**

Employees traveling to and from meetings at which attendance is considered a work assignment on a scheduled work day will receive compensatory time or cash (depending on their exempt or non-exempt status) equal to 100% of the time traveled outside the regular workday, less the actual time required to travel from the work station to the employee's home. Documentation of actual home to work travel time will be required prior to any employee being awarded compensatory time. The provisions of this policy shall apply to all employees who are currently eligible to receive cash or accrue compensatory time under policy or law.

### **Traveling On An Unscheduled Work Day**

Employees traveling to and from meetings at which attendance is considered a work assignment on an unscheduled work day will receive compensatory time or cash (depending in their exempt or non-exempt status) equal to 100% of the time traveled. The provisions of this policy shall apply to all employees who are currently eligible to receive cash or accrue compensatory time under policy or law.

## **OVERTIME FOR PERFORMING EMERGENCY SERVICES**

Employees called from their homes at unusual hours to handle emergency situations will receive compensatory time or cash (depending on their exempt or non-exempt status) equal to 100% of the actual travel time spent performing these duties, provided these duties are outside of the regularly scheduled work day.

### **On-Call Time**

Employees not required to remain on the employer's premises and free to engage in their own pursuits, subject only to the understanding that they leave word at their home or with the employer where they may be reached, are not considered working while on call. When these employees are "called out" on a job assignment, only the time actually spent responding to the call (including 100% travel time to and from the work site) should be counted as hours worked. If the "on call" conditions are so restrictive that employees are not really free to use the intervening periods effectively for their own benefit, they may be considered working.

## **REQUIRED BUDGETARY APPROVAL OF AGENCY OVERTIME**

The Department of Finance and Administration, Division of Budget, reviews and approves each agency's annual cash overtime budgetary request. Requests for additional cash overtime during each fiscal year must be submitted to the Division of Budget for approval. All requests for overtime should include the reasons for overtime and the agency's plan to fund the request.

The Department of Human Resources, Technical Services Division, reviews and monitors each agency's annual compensatory overtime budgetary request. Each agency should submit a projection of and justification for compensatory overtime hours and dollar amounts required for the fiscal year. Requests for additional compensatory overtime needed during each fiscal year should also be submitted to the Technical Services Division.

## **EXTRA SERVICES (HOLDING TWO STATE JOBS)**

No officer or employee in the several departments and agencies of the State government employed at fixed compensation shall be paid for any extra services, in an ex-officio or other capacity, except for qualified interpreters of the deaf or except when such officer's or employee's total annual income, including overtime payment, derived from the primary employment is less than eight thousand dollars (\$8,000). That officer or employee may hold a part-time position that requires no more than four (4) hours of active duty per working day or as herein provided.

All time worked for the State is considered working for the same employer as a single unit even if the work is performed in different departments. Thus, a non-exempt employee working a second State job is due premium overtime pay when that employee actually works over 40.0 hours in a workweek.

## **MEMORANDUM OF AGREEMENT (DUAL SERVICE CONTRACT)**

Employees may perform services for other State departments, agencies and institutions of State government for which employees receive compensation under certain conditions. The following are conditions which affect employee's attendance, leave and compensation:

- A. No employee shall receive any compensation for such services unless the work is performed at times when the employee is not on duty in his regular position.



- B. It is State policy that a full-time employee of an agency of State government should devote his full working time to his position. An arrangement shall, therefore, not be approved if it will diminish the time an employee will have available for the performance of regular duties.
- C. The funds shall be payable through the personnel system of the employee's agency and be shown on the records as additional earnings.
- D. Payment shall be authorized by a supplemental pay authorization, subjecting the additional earnings to income tax, social security and retirement deductions.
- E. If the employee's agency makes a contribution for social security and retirement, the amount of that contribution shall be included in the reimbursement between the two agencies.

Additional information is available by contacting the Contract Service Office of the Department of Finance and Administration.

Authority: T.C.A. 4-4-105; 8-23-201; 8-30-214  
Personnel Rule: 1120-6-.05

## CHAPTER 19 COMPENSATORY TIME

Compensatory time is time off with pay earned by an exempt, non-executive level employee (or by a non-exempt employee whose overtime is not compensated in cash) for time actually worked in excess of his regular 37.5 hour weekly schedule. Overtime claimed as compensatory time must have been worked at the request of the employee's supervisor. Compensatory time is accrued on a weekly basis and is not transferable to any type of leave.

### USE OF COMPENSATORY TIME

The use of earned compensatory leave is subject to approval of the department or agency head or designated manager or supervisor. When an employee requests annual leave and compensatory leave is available, the compensatory leave shall be used first, unless the accumulated annual leave balance at the beginning of the pay period is within two days of the maximum accrual rate for the employee's service group code. When an employee is within two days of the maximum, annual leave may be used throughout the pay period. Any employee whose annual leave balance is not within the two (2) day maximum at the beginning of a pay period must use compensatory leave during the entire pay period. The term "two days" shall mean 15.0 hours for 37.5 hours per week employees, 16.0 hours for 40.0 hours per week employees, or as approved by the Department of Human Resources for public safety employees on other authorized work cycles.

Employees' service group codes change on the first day of the month. Therefore, to determine eligibility to use annual leave before compensatory leave, the new group code maximum must be used.

Supervisors can schedule employees to use compensatory leave in order to reduce employees' compensatory balances. Before the compensatory leave is scheduled, the agency must have a written policy or handbook detailing situations when this will occur and the policy or handbook must be available to employees for review before the policy can be implemented. This requirement only applies to premium compensatory time earned by non-exempt employees in lieu of cash payment. This requirement does not apply to holiday compensatory time or regular compensatory time. Supervisors cannot schedule employees to use compensatory leave if employees are within two days of the maximum accrual rate for their service group codes.

Employees may use compensatory leave in any endeavor as long as the leave does not interfere with their duties.

An employee may use compensatory leave to perform military duty while directly receiving pay from the Federal Government.

Rev. 3/99

### COMPENSATORY TIME TRANSFERABLE

Compensatory time is transferable between the agencies of State service. If an employee in a State service agency transfers to another State agency outside the State service that will not accept the employee's compensatory balance, the State service agency must compensate the transferring employee for the value of the employee's compensatory time balance.

## **VALUE OF COMPENSATORY TIME**

The value of compensatory time accrued by a non-exempt employee is calculated at a rate not less than the employee's average rate over the last three years of employment or the employee's regular hourly rate in the State service agency at the time of the transfer, whichever is higher. The value of the compensatory time accrued by an exempt employee is calculated based on the employee's regular hourly rate in the State service agency at the time of transfer.

## **COMPENSATORY TIME PRIOR TO TERMINAL LEAVE**

Compensatory time earned must be taken prior to the beginning of terminal leave, taken prior to separation if the employee has no terminal leave, or paid in a lump sum at separation at the discretion of the appointing authority. Employees terminated from State service for gross misconduct must be paid for all accumulated compensatory time.

## **MAXIMUM ALLOWABLE COMPENSATORY TIME ACCRUAL**

Compensatory time may be accrued up to a maximum of four hundred and eighty (480) hours. Overtime earned above 480 hours must be paid in cash. Any variation to this maximum accrual limit must be approved in advance by the Commissioners of Human Resources and Finance and Administration.

## **REGULAR AND PREMIUM COMPENSATORY OVERTIME LIMITS**

On March 2, 1986, non-exempt employees became eligible to receive premium compensatory overtime in lieu of premium cash overtime for hours worked over 40.0 in a work week. Since this date, the maximum allowable premium compensatory overtime accumulation for non-public safety employees is two hundred and forty (240) hours. Public safety employees may earn up to a maximum of 480 hours of premium compensatory overtime.

Totals for regular and premium compensatory overtime will be added together and no employee will be allowed to exceed a total accumulation of both regular and/or premium compensatory overtime over 480 hours.

Overtime in excess of maximum allowed accruals must be paid in cash. The hours should be turned in as compensatory overtime hours and the computer system will automatically pay as cash.

Any compensatory time used by an employee will be deducted automatically from the premium compensatory overtime balance first. When that balance is exhausted, any additional compensatory time used will be charged to regular compensatory overtime.

To properly enter premium compensatory overtime on the attendance and leave record the following method must be used:

The time from 37.5 to 40.0 hours must be shown as regular compensatory time and hours over 40.0 hours shown as premium compensatory time.

Day/Date	S03	M04	T05	W06	T07	F08	S09	TOTAL
Scheduled		7.5	7.5	7.5	7.5	7.5		37.5
Worked		10.0	8.0	12.5	7.5	8.0		46.0
Non-Duty								
Code			2.5 comp/ot		6.0 prem/comp/ot			

The regular compensatory overtime of 2.5 hours should be entered as regular compensatory overtime. The amount of premium compensatory (6 hours) should be multiplied by 1.5 ( $6 \times 1.5 = 9$ ) and entered as premium compensatory overtime. This will ensure that the computer totals are correct and that the employee will know what he has accumulated.

For the leave balance section both totals will be added together and shown as one total for the appropriate pay period.

## **COMPENSATORY TIME FOR EXEMPT EXECUTIVE LEVEL EMPLOYEES**

Earned compensatory time may be retained and used when an employee becomes "executive level", with the exception of limited term appointees. Executive level employees are prohibited from earning additional compensatory time.

## **COMPENSATORY LEAVE USED IN PRIOR MONTH**

Compensatory leave used or earned and not reported in a prior pay period or month should be reported on the employee's current leave record. This type of correction can go back no further than two pay periods prior to the pay period currently being processed for payment. Proper documentation reflecting the need for the correction should become a part of the employee's attendance and leave record. This procedure will eliminate the use of a C-7 form for this transaction.

Any corrections occurring other than the current or prior two pay periods or other types of leave adjustments must be submitted on a C-7 to the Department of Human Resources.

Authority: T.C.A. 8-23-201; 8-30-214  
Personnel Rule: 1120-6-.06

## CHAPTER 20 RESCHEDULING WORKWEEK

The appointing authority of an agency or officially designated supervisor or manager may authorize the rescheduling of an employee's workweek. The employee's work hours in the workweek are rescheduled so that the employee performs his duties during the period when the work is needed. The employee should be informed of any schedule changes during the work week as soon as possible to ensure that there is a clear understanding of the expected work schedule.

Supervisors may request or allow employees to reschedule work weeks by having the employees work extra hours in the week to make up for periods of annual, sick or compensatory leave. This type of rescheduling allows supervisors to better manage overtime expenditures and allows employees to retain leave hours which would otherwise be deducted. If an employee has a statement from a doctor for a period of sick leave, the work week should not be rescheduled to disallow the sick leave use.

When these rescheduling alternatives are used, employees' time records should be updated to reflect both the rescheduling and the time worked under the revised schedules. No prior approval from the Departments of Finance and Administration or Human Resources is required to reschedule the same number of hours in a work week.

The following is an example of a regular work schedule before the work week is rescheduled:

Day/Date	S01	M02	T03	W04	T05	F06	S07	TOTAL
Scheduled		7.5	7.5	7.5	7.5	7.5		37.5
Worked		5.5	5.5	7.5	9.5	9.5		37.5
Non-Duty		2.0	2.0					4.0
Code		A	A					

The employee in this example would be charged 4.0 hours of annual leave and receive 4.0 hours of regular overtime.

The following example demonstrates the affect rescheduling would have on the above work week:

Day/Date	S01	M02	T03	W04	T05	F06	S07	TOTAL
Scheduled		5.5	5.5	7.5	9.5	9.5		37.5
Worked		5.5	5.5	7.5	9.5	9.5		37.5
Non-Duty								
Code								

By rescheduling the hours for Monday and Tuesday to 5.5 hours each, the employee no longer has to charge 4.0 hours of annual leave. By rescheduling the hours for Thursday and Friday to 9.5 hours each, the employee is no longer eligible for 4.0 hours of regular overtime.

Changing the scheduled number of workdays in a workweek from five (5) days to four (4) days while maintaining the same number of work hours for the work week is another example of rescheduling a work week.

Employees on an irregular work week should have their work week rescheduled to a regular work week when going on special leave, military leave, training leave or using any type of extended leave, with or without pay.

Employees cannot earn compensatory time and use this earned compensatory time within the same work week. This previously was referred to as "whitewashing" and is not permitted. Therefore, employees who work additional hours at the beginning of the work week and take time off at the end of the work week must charge the appropriate leave type for the time off period or the work week should be rescheduled.

Authority: T.C.A. 4-4-105

Personnel Rules: 1120-6-.03; 1120-6-.04

## **CHAPTER 21      PREVIOUSLY ACCRUED LEAVE USED IN A NON-ACCRUING POSITION**

An employee in a leave accruing position who is transferred with a leave balance to a non-accruing position may use leave as explained below:

- A. An employee in a non-leave accrual status at separation shall be paid for any annual and compensatory leave balances at the employee's regular hourly rate at the time of separation. A supplemental pay request form and a C-7 form must be submitted to the Transactions Section of the Department of Human Resources.
- B. A part-time employee scheduled to work certain days each week can use accrued leave only on the scheduled days to work. Enter and document on the leave record the number of hours used as hours worked. A C-7 form must be submitted to the Transaction Section of the Department of Human Resources to deduct this leave.
- C. A part-time employee scheduled to work certain days each week but called in when needed may not use any type of accrued leave until he transfers back to a leave accruing position.

Personnel Rule: 1120-6-.06(2)

## CHAPTER 22 LEAVE RECORDS

### PROCEDURES FOR LEAVE RECORDS

Leave reports are prepared at the end of the pay period for all employees. Each supervisor should take the following procedures to provide the required records for each employee:

- A. Determine the employee's work schedule. It is recommended that a schedule be made for a period of at least one month in advance.
- B. Determine the employee's daily shift (the actual time of day the employee is scheduled to begin and end work). When an employee's shift begins on one day and ends on another, this should be shown on the attendance and leave record on the day on which the majority of the time falls. When schedule changes occur, written documentation of the beginning and ending times of the new schedule should be noted on the employee's attendance and leave record.
- C. Determine that the employee's actual work performed as shown on the attendance and leave record is correct.
- D. Provide for any unscheduled absences or any extra time worked to be accurately recorded.
- E. Provide for coding of absences.
- F. Provide for a timekeeper for each reporting unit.
- G. When reporting attendance and leave for a pay period, the end of a pay period and the end of a workweek may not necessarily be the same; i.e. a workweek could be started in one pay period and concluded in the next pay period.
- H. New employees are to be paid for actual time worked during their first pay period, regardless of their work schedule.
- I. Separating employees are to be paid for actual time worked during their last pay period, regardless of their work schedule.
- J. Employees going on or returning from extended leave are to be paid for actual time worked for affected pay periods.
- K. Provide for a centralized audit of records for pay purposes. The agency's central personnel officer or appointing authority's designated representative should audit and maintain files on all attendance and leave records. These must be maintained for a period of at least three (3) years or until audited by the Comptroller of the Treasury.



- L. Audit of Records -- All employees' attendance records are subject to review and audit at any time by the Office of the Comptroller of the Treasury and the Department of Human Resources.
- M. Records -- Excused absences will not be reported to the Department of Human Resources; however, records of such leave must be maintained by the various departments and agencies.

#### **ATTENDANCE AND LEAVE RECORDS AND REPORTS**

A hard copy attendance and leave record per pay period per employee must be submitted to the proper audit authority at the end of each pay period. This record must be signed by both the employee and his supervisor, verifying the correctness of the hours scheduled and worked and leave taken.

Authority: T.C.A. 8-30-203  
Personnel Rule: 1120-6-.26